

# **GENERAL TERMS AND CONDITIONS OF ENGINEERING INDUSTRIES EXCELLENCE (OCTOBER 2023)**

## **1. GENERAL PROVISIONS**

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### **§ 1 SUBJECT MATTER OF THE CONTRACT**

1. These General Terms and Conditions apply to service contracts, purchase contracts and contracts to produce a work. Section 17 additionally applies to services. If the creation of a work is owed, Sections 18 to 21 additionally apply.
2. The Contractor shall provide his services according to state-of-the-art science and technology generally acknowledged at the time of the placement of the order. The Contractor does not owe any services exceeding the written specifications.
3. The standard products or standard technologies or documentations specified in the contract constitute the basis for the execution of the contract always in the most recent available version at the time of the conclusion of the contract.
4. In the absence of other contracts, the installation of software as well as instructions and training are not included in the scope of services; they can be offered to the CLIENT, though, according to the applicable price list of the Contractor.
5. Specifications of services and quality descriptions of the Contractor do not constitute a guarantee of quality or any other guarantee. Any guarantee requires the express written confirmation of the Contractor.

### **§ 2 CONCLUSION OF THE CONTRACT**

1. The General Terms and Conditions of the Contractor to which the Client agrees when placing the order shall apply exclusively. In the event that the order placed deviates from the Contractor's General Terms and Conditions, the General Terms and Conditions of the Contractor shall solely apply in this case as well, even if the Contractor has not objected. Hence deviations only apply if they have been expressly acknowledged in writing by the Contractor with reference to an amended provision of these General Terms and Conditions.

2. The terms of the Contractor's offer take precedence over provisions of these General Terms and Conditions that might contradict them.
3. Orders of the Client placed by e-mail are legally binding even without the Client's written confirmation.
4. The absence of a response by the Client upon receipt of the Contractor's confirmation letter is deemed as tacit consent.

### § 3 PAYMENT

1. If not agreed otherwise, the Contractor receives payment on a time and material basis in the form of daily rates in accordance with his applicable price list. A daily rate covers the work performance of eight hours per day. Work performances that go beyond or fall short of this will be paid on a pro-rata basis. The daily rates refer to services rendered in the time from Monday to Friday between 8:00 a.m. and 10:00 p.m. In the event that employees of the Contractor are active outside of the abovementioned times, the pro-rata daily rate is invoiced as follows:
  - for night work 150%.
  - for working on Saturdays 150%.
  - for working on Sundays 200%.
  - for working on holidays 200%.

The premiums do not accumulate. The highest premium shall apply in each case.

2. If billing on a time and material basis has been agreed upon, the employees of the Contractor shall record the daily working hours in an activities report, specifying the item of the contract they worked on. At his request, the Client is entitled to read the activities reports. Billing is done on a monthly basis always at the end of the month.
3. For services provided by employees of the Contractor at a different location than their headquarters, travel times, travel costs, daily allowance, expenses and, if applicable, hotel costs will be billed. The following framework conditions shall apply:
  - flight (within Europe): Economy Class.
  - flight (intercontinental): Business Class.
  - train: First Class.
  - mileage allowance: EUR 0,50/km.
  - hotel: according to expenditure, max. 4-star hotel.
  - public transport, taxis, and parking fees: according to expenditure.
  - per diem charges according to applicable tax guidelines.

- for travel times, half of the hourly rate or 1/16 of the daily rate per hour is billed.
4. All prices do not include the applicable statutory VAT and do not include any other taxes (e.g., Withholding Taxes).
  5. Payments are due without deductions 30 days as of the invoice date.
  6. As of the due date, default charges are to be paid amounting to 5% above the currently applicable base interest rate established by the German Central Bank. The assertion of more extensive default damage claims remains unaffected.
  7. The Contractor is entitled to transfer claims arising from the contractual relationship.
  8. The Client may offset claims of the Contractor or assert a retention right only if the counterclaim by the Client is undisputed or is legally binding.

#### **§ 4 EXECUTION OF THE CONTRACT**

1. The Client shall appoint a technically qualified contact person for the Contractor. The Contractor in turn shall appoint a project manager who can prepare consultations and make decisions on a short-term basis.
2. Within the scope established by the contract, the Contractor decides and takes responsibility for the way in which and by whom the contract will be executed. The Client does not have any authority to make decisions in this context; the Contractor, however, shall always endeavour to meet the wishes of the Client.
3. The Contractor is entitled to contract out services to sub-contractors.

#### **§ 5 CONTRACTUAL OBLIGATIONS ON THE PART OF THE CLIENT**

1. Should the information or documents provided by the Client turn out to be incorrect, incomplete, ambiguous, or objectively not executable, the Client - upon notification by the Contractor - shall perform the required corrections and/or additions promptly. This applies in particular to basic concepts or detailed concepts specified by the Client. The Client shall rectify promptly any defects or malfunctions in the provided components as indicated by the Contractor.
2. As a fundamental contractual obligation, the Client shall in particular provide the following services in due time and free of charge, completely and fault-free in terms of quality, and maintain such services for the duration of the service provision. He shall

- provide the Contractor with the necessary information at short-term notice; make the necessary documents available; appoint contact partners; and make decisions.
- make available on an operational basis the requisite IT and system environment with all other required resources as well as obtain all requisite approvals, authorizations, and access rights.

## § 6 CHANGE OF SERVICES

1. Changes of the services and all approved documents and other results of the contract that are affected by the changes are handled in accordance with the following procedure.
2. The scope of services agreed upon includes:
  - the scope of services described.
  - the quantity structure described for the functions and data as well as for the structural units and processes to be examined.
  - the described functionality of the software to be created.
  - the described complexity of the functions, structural units, and processes.
  - the described interfaces relevant for the order.
  - the Contractor's work results accepted by the Client, in particular the plans, concepts and determinations for follow-up phases entailed therein.
3. A change request can come from both Client and Contractor. Each change request is to be in writing and is to be handed over to the competent contact person.
4. If the change request comes from the Client, the Contractor shall examine - if he is willing to carry out the change - the change within a deadline to be agreed upon between the contractual parties; the Contractor shall determine the effects this change will have and present it in writing in a supplementary offer. If the change request comes from the Contractor, the supplementary offer already contains the effects to be shown:
  - description of the functional change and its effects on approved documents and other results.
  - effects on the defined scope of services and changes of expenditure and agreed deadlines caused by it.

5. In the event that a change request requires extensive examination by the Contractor as to whether and subject to what conditions the change is actually executable, he is entitled to demand an agreement on additional payment.
6. In the event that the change request by the Client requires the work to be interrupted, the Contractor is entitled to demand the agreed payment for the duration of the interruption as well as a corresponding increase in the agreed fixed price if and insofar as the employees affected by the interruption could not be reasonably deployed elsewhere. Implementation deadlines are extended by the number of calendar days on which the contractual work had to be interrupted owing to the change request as well as by a reasonable start-up period.
7. The Client shall inform the Contractor in adequate time, at the latest within 24 days, whether he is willing to accept the supplementary offer.
8. As long as the contractual parties cannot agree on the implementation of the change, the Contractor shall continue the work in accordance with the existing contract without the respective change. In this case, the Client is granted a right of termination in accordance with Section 649 of the German Civil Code.
9. Changes of the scope of services are to be agreed upon in a supplement to the contract.

## **§ 7 USAGE RIGHTS**

1. Work results in the meaning of this contract are analyses, plans and conceptual documents, program material (e.g., software) including corresponding documentation, reports, drawings, and similar work results.
2. Work results or such parts of a work result that the Contractor creates specially for the Client (if required, with the engagement of third parties) as part of the order are individually created work results. Individually created work results do not include integrated standard work results of the Contractor or third parties.
3. Standard work results in the meaning of this contract are all work results of the Contractor or third parties or parts thereof that have not been developed specially for the Client but are the object of the order. Changes, revisions, or redesigns of standard work results - also within the scope of the order - are also deemed standard work results.
4. Upon complete payment, the Client receives a simple and non-transferable usage right to the work results of the Contractor, i.e., a simple and non-transferable usage right to the work samples handed over. The Client is entitled to reproduce, translate, edit, and publicly report on the individually created work results.

5. Upon complete payment, the Client receives a non-exclusive and non-transferable usage right to standard work results, in particular to all standard methods and procedural models, corresponding manuals, standard training documents and standard software products, as far as they belong to the contractual service and the Client has - as far as applicable - acknowledged the corresponding standard license terms of the Contractor or the third party in writing.
6. The usage rights will be granted for an indefinite period and can only be terminated by the Contractor for cause. Such a cause is on hand in particular if the Client does not properly fulfil his contractual obligations in a particularly substantial manner or does not properly fulfil them despite prior warning or if he breaches statutory provisions at the expense of the Contractor.

## **§ 8 THIRD-PARTY WORK RESULTS**

1. To the extent it is provided in the contract, the Client can provide the Contractor with third-party work results for the provision of the contractual service, for adaptation or other transformations.
2. The Client shall ensure that the usage conditions for third-party work results will not be an obstacle to the provision of the contractual service, including the usage rights specified in Section 7; to the adaptation or exploitation and/or publication of the adaptation.
3. The Client releases the Contractor and his sub-contractors from any liability for third-party claims that are based on the usage of these work results.

## **§ 10 DEADLINES, FORCE MAJEURE**

1. Dates and deadlines of the Contractor are fundamentally nonbinding, unless expressly described as binding in the contract.
2. Deadlines are extended and dates postponed to an adequate extent for the Contractor in the event of disruptions due to force majeure and other obstacles for which the Contractor is not responsible, insofar as such obstacles - e.g., disturbances in his own supply system, strikes, lockouts, breakdowns, etc. - exert an influence on the Contractor's service. Should the Client fail to execute the services incumbent upon him in due time, agreed deadlines are also postponed by a corresponding period of time.

## **§ 11 VIOLATIONS OF OBLIGATIONS BY THE CLIENT**

1. In the event that the Client culpably violates a contractual obligation, the Contractor is entitled to demand compensation for the damage he incurs.
2. Should the Client fail to provide a service or not provide it in the form that it is owed by him, the Contractor is entitled to withdraw from the contract and, subject to the conditions of § 11 No. 1, demand compensation for damages instead of the service or compensation for unnecessary expenditures if he had granted the Client an adequate grace period for the provision of the service or supplementary performance and this period has lapsed.
3. The Client is in default even without a written warning.
4. Further rights of the Contractor remain unaffected.

## **§ 12 VIOLATIONS OF OBLIGATIONS BY THE CONTRACTOR**

1. Insofar as the Contractor fails to provide a service or not provide it in the form that it is owed by him, the Client is entitled to demand compensation for damages instead of the service or compensation for unnecessary expenditures and withdraw from the contract if he had granted the Contractor an adequate grace period for the provision of the service or supplementary performance and this period has lapsed.
2. An adequate grace period granted by the Client has to amount to at least twelve working days.
3. The Contractor is in default only upon receipt of a warning. All warnings and deadlines of the Client require the written form to be effective.
4. If the Contractor has executed the service already in parts, the Client can demand compensation for damages for the entire service only if his interest in the entire service requires it. In this case, withdrawal from the entire contract is possible only if the Client has no interest in the partial service.
5. If the Contractor has executed a due service not in compliance with contractual provisions, the Client is not entitled to withdraw from the contract and/or demand compensation for damages instead of the entire service or compensation for unnecessary expenditures if the violation of obligations is negligible.

## **§ 13 LIABILITY, STATUTE OF LIMITATIONS**

1. The Contractor pays compensation for damages irrespective of legal basis (e.g., violation of obligations or impermissible act) only:

- if wilful intent or deceit is on hand: the full amount; if gross negligence or, despite the assumed guarantee, defects are on hand: only in the amount of the foreseeable damage that was to be prevented by due diligence or the guarantee.
- in other cases: only if the violation of a fundamental contractual obligation is on hand that is capable of endangering the contractual purpose; or in terms of delay or impracticality: always limited to typical direct damages that were foreseeable on conclusion of the contract and to an amount totalling at the most the entire payment of the contract. The Contractor is not liable for secondary damage from a defect caused by slight negligence, other indirect damages, and financial losses.

The option of claiming contributory negligence (e.g., from § 10 or § 22) remains open. Any liability for all other damage is excluded, with legal liability for personal damage in accordance with the Product Liability Act remaining unaffected.

2. For claims by the Client arising from a violation of obligations or cancelation of the contract, a limitation period of one year applies unless the specific contract provide a shorter limitation period. The limitation period begins with the coming into being of the claim and the Client's knowledge or else grossly negligible ignorance of the circumstances on which the claim is based and ends at the latest upon the expiration of ten years after the claim's coming into being.

## **§ 14 SECRECY, DATA PROTECTION**

1. For an unlimited period of time, Contractor and Client are obligated to treat with confidentiality all company secrets and confidential information of the respective other party that has come to their knowledge and refrain from disclosing them to third parties. This obligation to secrecy does not apply to company secrets and confidential information that the recipient knew already beforehand without any obligation to secrecy; or that are or will become generally known without the recipient being responsible for it; or that were legitimately disclosed to the recipient by a third party without obligation to secrecy; or that were verifiably developed independently by the recipient; or that were released in writing by the disclosing company for publication.
2. Contractor and Client shall pledge all persons they deploy for the provision of the service to preserve confidentiality in accordance with § 14 No. 1.
3. Contractor and Client shall preserve data secrecy pursuant to Art. 28 Abs. 3 lit. b DSGVO and deploy only such sub-contractors for the execution of the order who have been pledged to data secrecy.

## § 15 DUTY OF ALLEGIANCE

1. Contractor and Client are obligated to mutual allegiance. Especially the active solicitation of employees of the respective other contractual party is to be refrained from.
2. Furthermore, Contractor and Client are obligated not to hire or employ in any other way, neither on his own account or through third parties, any employee of the respective other contractual party during the term of the contract as well as twelve months subsequence to its expiration unless the respective other contractual party agrees to it beforehand in writing.

## § 16 TERMINATION

1. A contract can be terminated with notice by the Client at any time. In this case, the Contractor is entitled to demand the agreed payment minus the expenditures he saves on account of the termination or minus the amount he acquires by deploying his employees elsewhere or wilfully fails to acquire.
2. Each party is entitled to terminate a contract for cause without notice if the other party has infringed upon fundamental provisions of the contract and has failed to remedy the situation immediately upon written request. In addition, the Contractor is entitled to termination without notice if the Client has allowed to lapse to no avail a grace period granted in accordance with § 19 or § 23.
3. In the event that the Contractor has given cause to the Client terminating the contract without notice, the Client has a payment obligation only in the relation of the benefit that the provided services have for the Client to the benefit of the contractually agreed services.
4. Insofar as partial acceptance procedures are conducted, the accepted services shall not be taken into consideration for the reduction of payment.
5. In the event that the Client has given cause to the Contractor terminating the contract without notice, the same applies to the legal consequences of the termination as in the case of termination by the Client under § 16 No. 1.
6. The termination requires the written form.

## 2. SPECIAL PROVISIONS FOR SERVICE CONTRACTS

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### § 17 EXCLUSION OF WITHDRAWAL FROM SERVICE CONTRACTS

1. A service contract can be terminated in writing solely subject to the conditions of § 16 No. 1, 2, 3, 5 and 6. Deviating from § 12, a withdrawal from the contract is excluded.

## 3. SPECIAL PROVISIONS FOR CONTRACTS TO PRODUCE A WORK

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### § 18 OBLIGATIONS TO COOPERATE BY THE CLIENT

1. Due to the high complexity and client-relatedness of IT and software projects, the project success is achievable only within the framework of a constant and intensive cooperation between the Client and the Contractor. This applies in particular to the crafting of the specifications, which requires design decisions by the Client to a very large extent, as well as an intensive and interactive analysis of the affected work processes and procedures at the Client's operation. This cooperation by the Client constitutes an essential contractual obligation.
2. As an essential contractual obligation, the Client shall provide the requisite obligations to cooperate and provide in due time and free of charge, completely and fault-free in terms of quality, and maintain such services for the duration of the service provision. In particular, he shall
  - perform the operating and maintenance of the systems (operating systems and other software products employed),
  - back up data and programs at reasonable intervals on a regular basis in machine-readable form and in several generations and
  - provide data and cases for testing in due time.
3. The Client shall test every software carefully for faultlessness and usability in a concrete situation before starting the operational use of the software. This also applies to software he receives as part of warranty and maintenance.

## § 19 VIOLATION OF OBLIGATIONS TO COOPERATE

1. In the event that the Client does not meet his obligations to cooperate or meets them improperly or not in time and is in default with making good on his obligations to cooperate, the Contractor is entitled to demand adequate compensation. The Contractor can also grant the Client a reasonable grace period for making good on his obligations to cooperate, declaring that he will terminate the contract if this grace period lapses to no avail.

## § 20 ACCEPTANCE

1. With the acceptance, the Client declares vis-à-vis the Contractor that the work complies with the specifications.
2. With the notification that the work is ready for acceptance, the Contractor hands over to the Client an inventory of all subsections to be accepted. At the point in time at which the work is made available for acceptance, the Contractor hands over to the Client the subsections to be accepted. The four-week acceptance period begins at the point in time at which the work is made available for acceptance.
3. During the acceptance procedure, the Client draws up a report about defects that were detected, specifying all information serviceable for defect identification. The classification of defects in defect categories is done in consultation between the Client and the Contractor. The decision on declaring acceptance or refusing it is reserved to the Client. The Client shall notify the Contractor in writing about any defects immediately upon their detection.
4. At the end of the acceptance period at the latest, the Client shall hand over to the Contractor the acceptance report, which contains the declaration or refusal of acceptance, reasons for the refusal of the acceptance and the defect report.
5. Defects detected in a subsection during the acceptance procedure are classified as follows:

Category 1: The work cannot be used. The defect cannot be worked around by dint of organizational or other economically reasonable means.

Category 2: The use of the work is not impaired to such an extent that it cannot be used at all. The defect can be worked around by dint of organizational or other economically reasonable means.

Category 3: No material effects on the functionality and usability. The use of the work is not or only marginally restricted.

6. If defects that hinder acceptance are determined during the acceptance procedure, the acceptance period is extended by the time it takes to rectify the defects plus an adequate testing period. The acceptance

period is not extended if the defect that hinders acceptance does not materially obstruct the acceptance procedure or lead to the procedure being suspended.

7. Acceptance of the work shall be declared by the Client in the acceptance report as soon as the Contractor has proven that the work functions in accordance with the specifications and complies with them and no Category 3 defects have occurred.
8. Category 2 defects shall be rectified, as far as possible, during the acceptance procedure. Category 1 and Category 2 defects that are still on hand after acceptance shall be rectified within the scope of the warranty.
9. The acceptance / partial acceptance of the work is deemed declared if the Client does not make a declaration on the acceptance or refusal of acceptance within the four-week acceptance period, although no Category 3 defect is on hand.
10. For subsections of the work that can be demarcated and used economically on their own, the Contractor is entitled to request that partial acceptances be carried out. In this case, the entire service is deemed accepted (final acceptance) with the last partial acceptance. Partial acceptances that were already carried out remain unaffected by the success of the final acceptance.

## **4. FINAL PROVISIONS**

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### **§ 21 APPLICABLE LAW, PLACE OF JURISDICTION**

1. The laws of the Federal Republic of Germany alone apply without UNCITRAL legislation.
2. Place of jurisdiction is Mannheim.

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