

TERMS AND CONDITIONS

for the sale and delivery of software products for services in consulting, organisation management, programming and factory licensing.
As at: March 2019

1. Contract outline and validity

- 1.1. All contracts and agreements are only legally binding if they are signed by the contractor and duly executed according to the rules of the company. They are only compulsory to the degree indicated in the order confirmation.
Purchase conditions of the contracting authority are herewith excluded for the present transaction and the entire business relations. On principle, offers are subject to change. These terms and conditions apply only to contracts with entrepreneurs according to § 14 BGB.

2. Service and control

- 2.1. The subject of an order can be:
- Development of an organizational plan
 - Global and detailed analysis
 - Design of specific programs
 - Delivery of library-(standard)-programs
 - Acquisition of use rights for software products
 - Acquisition of plant-use permits
 - Training for operators
 - Participation during software implementing phase (conversion support)
 - Consultancy via telephone
 - Software maintenance
 - Creation of program data carriers
 - Other services
- 2.2. The elaboration of individual concepts and programs are exclusively designed due to the nature and extent of information, documents and resources, provided by the contracting authority. This includes practice-oriented test data and testing capabilities which are provided timely, during contractually agreed normal working hours and at client expenses.
If the client is already using the asset in regular operation which was placed at the disposal for testing, the client assumes responsibility for the protection of real data.
- 2.3. The basis for designing individual programs is a written service description provided by the client which is worked out and charged for by the contractor.

The client guarantees an accurate and complete service description when handing over all the documents signed by the client to certify the accuracy of statement. Change requests can be incorporated and are accepted to any point of time according to predefined datelines and price agreement.

- 2.4. Individually developed software or program adaptations require that each program package is approved by the client no later than 4 weeks after delivery.

The client approval is carried out via protocol. (Accuracy and completeness check on basis of performance accepted by the contractor using the description in point 2.2 due to the test data available). The delivered software with the end date of the specified time frame has effectively been approved if the client allows a time frame of four weeks to elapse without approving the program and without claiming any substantial software deficiencies in written form. In the case of software usage in real-time by the contracting authority, the software is regarded by all means as approved.

If there are any defects, deviations from the agreed written service description, the client informs and documents emerging problems in a written form to the contractor to remedy defects efficiently. In the case of written client notifications reporting serious defects which influence regular operations, an additional software approval is required. The client is not entitled to reject the software due to minor defects.

- 2.5. Ordering library (standard)-programs, the contracting authority confirms with the order to know the scope of supply and services.

- 2.6. The client is obligated to inform immediately the contractor when during the course of project development, the order execution is in accordance with performance specification actual or legally impossible.

If the client does not change the performance specification or is able to give the required preconditions to guarantee the execution, the contractor has the right to reject the execution. In the event of client default or changes of service description which influence the successful execution, the contractor is authorised to withdraw from the order.

Any costs and expenses caused by the client have to be replaced.

- 2.7. The delivery of program data carriers, documentation, and performance specifications are at the expense and risk of the client. Further training and consultancy are charged separately. Insurances are only offered by client request.

3. Prices, taxes and fees

- 3.1. All prices are indicated in Euro without VAT. They are valid only for the present order. The given prices relate to the client address of record.

The costs for program data carriers, as well as any contractual fees, are charged separately.

- 3.2. The contractor is entitled to increase the contractually agreed flat rates accordingly in the event of increases in wage/material costs or other costs and levies occurring at the time of contract conclusion, and to charge the client at the start of the month following the increase. The adjustment amount is governed by the original values of the Labour Cost Index of the Federal Statistical Office for Economic Information and Communication (WZ08-J), which is published on the Internet in the GENESIS-Online database of the Federal Statistical Office. The contractual flat rates are also increased accordingly for customer-specific program expansions.
- 3.3 For library-(standard) programs, prices are calculated according to the list prices valid on the day of delivery.
Any other services (organisational consultancy, programming, training, conversion support, telephone consultancy, etc.) are calculated due to the daily valid fees of service support. Contract price deviations related to the expenditure of time, which is not represented by the contractor, invoice will reflect actual costs/expenses.
- 3.4. Travelling expenses, costs for overnight stays are charged to client's account according to current rates. Travel time has to be considered as working time.

4. Date of delivery

- 4.1. The contractor strives to meet the agreed project deadlines.
- 4.2. Desired deadlines can only be met if the client provides all the necessary information and documents in time. Especially the accepted performance specifications mentioned in point 2.3 have to be provided and the client has to make sure to meet the demands of the contractor. The conductor is not responsible for any delivery delays and cost increases caused by inaccurate, incomplete, or subsequently revised data and information or documents made available. The conductor does not assume responsibility for a possible delay.
Consequently the client is charged for any resulting additional costs caused by inaccurate information delivery.
- 4.3. In the case of orders that require multiple units or programs, the contractor is entitled to deliver and invoice partially.

5. Payment conditions

- 5.1. Bills including VAT are payable within 14 days from invoice date, without any deduction. For partial invoices, are considered along the lines of predefined payment terms according the overall order.
- 5.2. Orders that require multiple units (e.g. computer programs and / or training, implementation in stages), entitle the contractor to deliver according to unit and invoice partially after service delivery.
- 5.3. The compliance of agreed payment dates is an essential condition for the implementation of delivery or performance by the contractor. This noncompliance of agreed payments, entitle the contractor, to discontinue the order and rescind the contract. All associated costs and profit losses have to be covered by the client.
In case of late payment, the contractor is allowed to charge interests for default. When according to partial payments, 2 outstanding rates occur, the contractor will be authorised to report a loss and all services are due for payment.

5.4. The client is not entitled to withhold payment if delivery is not completed or in the case of guarantee or warranty claims or complaints.

6. Copyright and usage

6.1. All copyrights related to agreed services (programs, documentation, etc.) are limited to the contractor or its licensors. After payment the client receives only the right to use the software according to licensed usage, for the hardware specified and according to the number of licenses purchased for the simultaneous use on multiple workstations. Due to this contract the client acquires only an authorisation of usage. The contracting authority is not allowed to any kind of further distribution.

The client involvement in the software development, gives no right of unlicensed usage. Any infringement of copyrights can cause a claim for damages.

6.2. The client is allowed to make copies for archival and backup purposes only if the original software does not contain any explicitly mentioned prohibit of licensors or a third party, and only if all copyright and proprietary notices are transmitted unmodified to the copied version.

6.3. Should the production of interoperability of the software, require a disclosure of interfaces, the client has the opportunity to order against payment. If this requirement is not fulfilled and decompilation under copyright law is carried out, the results establish interoperability. Abuse will cause a claim for damages.

7. Right of withdrawal

7.1. If the contractor is not able to comply with a term and agreed delivery time caused by his exclusive fault or unlawful action, the client has the right to rescind from the contract via registered letter. But only in the case that within a reasonable period of grace the essential part of the agreed performance is not provided and the client can not be made responsible for it.

7.2. In the case of unpredictable events such as interruption by acts of God, labour conflict, natural disasters and transportation stoppages or other circumstances beyond the influence of the contractor, relieve the contractor from the obligation to deliver or allow him a revision of the agreed delivery time.

7.3. A client cancellation is only possible with a written consent of the contractor. If the contractor agrees to a cancellation, he has the right, in addition to the services rendered and accrued costs, to charge a cancellation fee of 30% of the still unsettled order value for the overall project.

8. Warranty, maintenance, modifications

8.1. The warranty period runs for 12 months starting from the acceptance. In the case of justifiable defects, defects are repaired within a reasonable period of time, while the client facilitates the contractor any information and investigation data necessary for corrective measures, otherwise the period of time to rectify the defects will be extended.

8.2. Any necessary corrections and modifications caused by organisational or technical deficiencies till delivery of agreed services, will be free of charge.

8.3. Costs for assistance, false diagnosis, failures or emergency maintenance, which go along with the contracting authority, as well as other modifications necessary, will be

charged for. This is also the case for debugging, program modifications, complements or any additional interventions made by the contracting authority or by third parties.

- 8.4. In addition, the contractor assumes no responsibility for any failures, interferences or damages caused by improper operation or modified operating system components, interfaces and parameters, the use of improper means for organisation and data processing medium, as long as they are prescribed, abnormal operating conditions (particularly deviations from the installation and storage conditions) and damages in transit.
- 8.5. Programs modified by internal programmers of the client or any third party are without guarantee.
- 8.6. As the subject of an order amending or supplementing of existing programs, the warranty covers the revision or supplementation. Hence the warranty for the original program is not renewed.

9. Liability

- 9.1. The contractor is liable for damage caused by him or his entities or agents on account of intentional or grossly negligent behavior. Liability for slight negligence is excluded except in cases of injury to life, body or health or liability according to the Product Liability Act. Additionally, the contractor is liable even for slight negligence for commonly expected and foreseeable damages incurred upon violation of one of the essential contractual obligations.

10. Loyalty

- 10.1. Both parties are committed to mutual loyalty. They will refrain from enticement and employment, even through third parties, of employees who participated in the project realisation, during the project and 12 months after the project. The culpable and offending contractual partner is obligated to pay a generalized compensation fee in the amount of one annual salary of the employee.

11. Privacy and confidentiality

- 11.1. The contractor obligates his employees to keep the client's data confidential and exclusively reveal this data for the purpose of providing a service for the client during the time frame of the employment relationship upon explicit request of the client; this refers to data from data applications that have been entrusted or made available to employees within the context of providing a service for the client.

12. Advertorial Emailing

- 12.1 The principle agrees that the agent uses their and their employees professional contact details (post and email addresses, fax and phone numbers) for counselling and advertisement for the company's own use only. The company will therefore send product information and/or newsletters to the principle. This agreement can be cancelled in a written form or via email at any time.

13. Other

- 13.1. If any single terms and conditions of the present contract be or become invalid, does this consequently not affect the rest of the contract.

14. Final Clause

14.1. Unless otherwise agreed, the legal provisions applicable between contractor and client are exclusively subject to German law, even if the order is executed abroad. Any disputes are exclusively settled by the local court with jurisdiction over the contractor's place of business.