

General terms and conditions

for the sale and delivery of organization, programming services & work use licenses of software products

These GTC are based on those of Fachverband Unternehmensberatung, Buchhaltung und Informationstechnologie, Wiedner Hauptstraße 63, A-1045 Vienna (2018 edition).

1. scope of contract and validity

All orders and agreements shall only be legally binding if they are signed by the contractor in writing and in accordance with the company's instructions and shall only be binding to the extent stated in the order confirmation. Terms and conditions of purchase of the client are hereby excluded for the present legal transaction and the entire business relationship. Offers are in principle subject to change.

2. performance and testing

2.1 The subject of an order may be:

- Elaboration of organizational concepts
- Global and detailed analyses
- Creation of individual programs
- Delivery of library (standard) programs
- Acquisition of rights of use for software products
- Acquisition of licenses for use of works
- Participation in commissioning (changeover support)
- Telephone consulting
- Program maintenance
- Creation of program carriers
- Other services

2.2 The development of individual organizational concepts and programs shall be carried out according to the type and scope of the binding information, documents and aids provided in full by the Customer. This shall also include practical test data as well as test facilities to a sufficient extent, which shall be provided by the Principal in a timely manner, during normal working hours and at its own expense. If the client is already working on the system provided for testing in live operation, the responsibility for securing the live data lies with the client.

2.3 The basis for the creation of individual programs shall be the written performance specification which the Contractor shall prepare against cost calculation on the basis of the documents and information provided to it or which the Customer shall make available. This performance specification is to be checked by the customer for correctness and completeness and to be marked with his approval. Requests for changes occurring at a later date may lead to separate agreements on dates and prices.

2.4 Individually created software or program adaptations shall require program acceptance by the Customer for the respective program package at the latest four weeks after delivery. This shall be confirmed in a protocol by the Customer. (Check for correctness and completeness on the basis of the performance specification accepted by the Contractor by means of the test data provided under item 2.2). If the Customer allows the period of four weeks to elapse without accepting the program, the delivered software shall be deemed to have been accepted on the end date of the aforementioned period. If the software is used in live operation by the customer, the software shall be deemed to have been accepted in any case. Any defects that occur, i.e. deviations from the performance description agreed in writing, shall be reported by the Customer to the Contractor with sufficient documentation, who shall endeavor to remedy the defects as quickly as possible. If there are significant defects reported in writing, i.e. if live operation cannot be started or continued, a new acceptance shall be required after the defects have been remedied. The Customer shall not be entitled to refuse acceptance of software due to immaterial defects.

2.5 When ordering library (standard) programs, the Customer confirms with the order the knowledge of the scope of services of the ordered programs.

2.6 Should it become apparent in the course of the work that the execution of the order in accordance with the service description is actually or legally impossible, the Contractor shall be obliged to notify the Client thereof immediately. If the Client does not change the service description or create the preconditions for execution to become possible, the Contractor may refuse execution. If the impossibility of execution is the result of a failure on the part of the Customer or a subsequent change in the service description by the Customer, the Contractor shall be entitled to withdraw from the order. The costs and expenses incurred for the Contractor's activities up to that point as well as any dismantling costs shall be reimbursed by the Client.

2.7 Any shipment of program carriers, documentation and service descriptions shall be at the expense and risk of the Customer. Additional training and explanations requested by the client will be invoiced separately. Insurance shall only be provided at the request of the client.

2.8 We expressly point out that a barrier-free design within the meaning of the Federal Act on the Equalization of Persons with Disabilities (Federal Act on the Equalization of Persons with Disabilities - BGStG) is not included in the offer, unless this was requested separately/individually by the Client. If the barrier-free design has not been agreed upon, it shall be incumbent upon the Client to review the service for its admissibility with regard to the Federal Disability Equality Act (Bundes-Behindertengleichstellungsgesetz - BGStG). Likewise, the Client shall review content provided by it for its legal admissibility, in particular under competition, trademark, copyright and administrative law. The Contractor shall not be liable for the legal admissibility of content in the event of slight negligence or after fulfilling any duty to warn the Customer if such content was provided by the Customer.

3. prices, taxes and fees

3.1 All prices are quoted in Euro without value added tax. They apply only to the present order. New licenses and clients shall be invoiced in accordance with the applicable price lists. The prices quoted are ex Contractor's registered office or place of business. The costs of program carriers (e.g. CD's, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes etc.) as well as any contract fees will be invoiced separately.

3.2 For library (standard) programs, the list prices valid on the day of delivery shall apply. For all other services (organizational consulting, programming, training, conversion support, telephone consulting, etc.), the amount of work shall be charged at the rates valid on the day the service is rendered. Deviations from a time expenditure on which the contract price is based, for which the Contractor is not responsible, shall be invoiced according to actual occurrence.

3.3 The costs for travel, daily and overnight allowances shall be invoiced separately to the Client in accordance with the applicable rates. Travel times shall be deemed to be working time.

4. delivery date

4.1 The Contractor shall endeavor to meet the agreed dates of performance (completion) as closely as possible.

4.2 The targeted performance dates can only be met if the Customer provides all necessary work and documents in full by the dates specified by the Contractor, in particular the performance specifications accepted by it as per item 2.3, and fulfills its obligation to cooperate to the extent required. The Contractor shall not be responsible for delays in delivery and cost increases resulting from incorrect, incomplete or subsequently changed data and information or documents provided and such delays shall not result in default on the part of the Contractor. Any additional costs resulting therefrom shall be borne by the Client.

4.3 In the case of orders comprising several units or programs, the Contractor shall be entitled to make partial deliveries or to issue partial invoices.

5. payment

5.1 The invoices issued by the Contractor, including value added tax, shall be payable without any deductions and free of charges no later than 14 days after receipt of the invoice. For partial invoices, the terms of payment specified for the overall order shall apply analogously.

5.2 In the case of orders comprising several units (e.g. programs and/or training, realizations in partial steps), the Contractor shall be entitled to invoice after delivery of each individual unit or service.

5.3 Compliance with the agreed payment dates is an essential condition for the Contractor's performance of the delivery or fulfillment of the contract. Non-compliance with the agreed payments entitles the Contractor to stop the current work and to withdraw from the contract. All related costs as well as loss of profit shall be borne by the Client. In the event of late payment, interest on arrears shall be charged at the rate customary in banking. In the event of non-compliance with two installments in the case of partial payments, the Contractor shall be entitled to enforce loss of dates and to call in handed-over acceptances.

5.4 The Client is not entitled to withhold payments due to incomplete total delivery, warranty or guarantee claims or complaints.

6. copyright and use

6.1 After payment of the agreed remuneration, the Contractor shall grant the Customer a non-exclusive, non-transferable, non-sublicensable right, unlimited in time, to use the software for the hardware specified in the contract and to the extent of the purchased number of licenses. Each license can only be used on one workstation and not on several workstations at the same time. To use all work results created on the basis of the Contractor's contract for the Contractor's own internal use. All other rights shall remain with the Contractor. The Customer's participation in the production of the software shall not result in the acquisition of any rights beyond the use stipulated in the present contract. Any infringement of the Contractor's copyrights shall result in claims for damages, in which case full satisfaction shall be paid.



6.2 The Customer is permitted to make copies for archiving and data backup purposes on condition that the Software does not contain any express prohibition by the Licensor or third parties and that all copyright and proprietary notices are transferred unchanged to these copies.

6.3 If the disclosure of the interfaces is required for the creation of interoperability of the software in question, this shall be ordered by the Customer from the Contractor against reimbursement of costs. If the Contractor does not comply with this requirement and decompilation takes place in accordance with the Copyright Act, the results are to be used exclusively for the purpose of establishing interoperability. Misuse will result in compensation for damages.

6.4 If software is provided to the Customer whose license holder is a third party (e.g. standard software from Microsoft), the granting of the right of use shall be governed by the license terms of the license holder (manufacturer).

7. right of withdrawal

7.1 In the event that an agreed delivery time is exceeded due to the sole fault or unlawful action of the Contractor, the Customer shall be entitled to withdraw from the relevant order by means of a registered letter if the agreed performance is not provided in essential parts even within the reasonable grace period and the Customer is not at fault for this.

7.2 Force majeure, labor disputes, natural disasters and transport blockages as well as other circumstances beyond the Contractor's control shall release the Contractor from the delivery obligation or allow the Contractor to re-determine the agreed delivery time.

7.3 Cancellations by the Client, which are neither provided for by law nor justified, are only possible with the written consent of the Contractor. If the Contractor agrees to a cancellation, it shall have the right to charge a cancellation fee in the amount of 30% of the order value of the overall project not yet invoiced, in addition to the services rendered and costs incurred.

8. warranty, maintenance, modifications

8.1 The Contractor warrants that the Software will perform the functions described in the related documentation, provided that the Software is used on the operating system described in the Contract.

8.2.1 A prerequisite for troubleshooting is that

- the Customer sufficiently describes the error in an error message and this can be determined for the Contractor;
- the Customer provides the Contractor with all documents required for the elimination of the defect;
- the Customer or a third party attributable to it has not interfered with the Software;
- the Software is operated under the Intended Operating Conditions in accordance with the Documentation;

8.2.2 In case of warranty, improvement shall in any case have priority over price reduction or rescission. In the event of a justified notice of defect, the defects shall be remedied within a reasonable period of time, whereby the Customer shall enable the Contractor to take all measures necessary to examine and remedy the defect. The presumption of defectiveness pursuant to § 924 ABGB shall be deemed excluded.

8.2.3 Corrections and additions that prove necessary until the handover of the agreed service due to organizational and programming deficiencies for which the Contractor is responsible shall be carried out by the Contractor free of charge.

8.3 Costs for assistance, misdiagnosis as well as elimination of errors and malfunctions for which the Customer is responsible as well as other corrections, changes and additions shall be carried out by the Contractor against payment. This shall also apply to the rectification of defects if program changes, additions or other interventions have been made by the Customer itself or by third parties.

8.4 Furthermore, the Contractor shall not assume any warranty for errors, malfunctions or damage resulting from improper operation, changed operating system components, interfaces and parameters, use of unsuitable organizational means and data carriers, insofar as such are prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) and transport damage.

8.5 Any warranty by the Contractor shall lapse for programs that are subsequently modified by the Client's own programmers or third parties.

8.6 If the subject matter of the order is the modification or supplementation of already existing programs, the warranty shall refer to the modification or supplementation. The warranty for the original program shall not be revived thereby.

8.7 Warranty claims shall become statute-barred six (6) months after handover.

9. liability

9.1 The Contractor shall only be liable to the Customer for damage for which it is demonstrably responsible in the event of gross negligence. This shall also apply mutatis mutandis to damage attributable to third parties engaged by the Contractor. In the event of personal injury for which the Contractor is responsible, the Contractor shall be liable without limitation.

9.2 Liability for indirect damages - such as loss of profit, costs associated with a business interruption, loss of data or claims by third parties - is expressly excluded.

9.3 Claims for damages shall become statute-barred in accordance with the statutory provisions, but no later than one year after knowledge of the damage and the damaging party.

9.4 If the Contractor performs the Work with the assistance of third parties and warranty and/or liability claims arise in this context, the Contractor shall assign these claims to the Client. In this case, the Client shall give priority to these third parties.

10. loyalty

The contracting parties undertake to be loyal to each other. They shall refrain from any enticement and employment, also via third parties, of employees who have worked on the realization of the orders, of the other contracting party for the duration of the contract and 12 months after the termination of the contract. The contracting party violating this provision shall be obliged to pay liquidated damages in the amount of one year's salary of the employee.

11. data protection, secrecy

The Contractor shall oblige its employees to comply with the provisions pursuant to Section 6 of the Data Protection Act.

12. miscellaneous

Should individual provisions of this contract be or become invalid, this shall not affect the remaining content of this contract. The contracting parties shall cooperate in partnership to find a provision that comes as close as possible to the invalid provisions.

13. final provisions

Unless otherwise agreed, the statutory provisions applicable between fully qualified merchants shall apply exclusively under Austrian law, even if the order is executed abroad. For any disputes, the local jurisdiction of the court having subject-matter jurisdiction for the Contractor's place of business shall be exclusively agreed. For sales to consumers within the meaning of the Consumer Protection Act, the above provisions shall apply only to the extent that the Consumer Protection Act does not mandatorily provide for other provisions.

Mediation clause:

In the event of disputes arising from this contract that cannot be settled by mutual agreement, the contracting parties mutually agree to involve registered mediators (ZivMediatG) specializing in business mediation from the list of the Ministry of Justice for the out-of-court settlement of the conflict. If no agreement can be reached on the selection of the business mediators or on the content of the dispute, legal action will be taken at the earliest one month after the failure of the negotiations.

In the event of a mediation that does not materialize or is terminated, the following shall apply in

any court proceedings that may be initiated shall be governed by Austrian law. All necessary expenses incurred as a result of prior mediation, in particular also those for a legal advisor, may be claimed as "pre-litigation costs" in court or arbitration proceedings as agreed.

