

# General Terms of Contract th data GmbH (hereinafter referred to as "Provider")

## 1. Remuneration, payment, ancillary copyrights, dates

1.1 Unless agreed otherwise, the remuneration will be charged by expense at the Provider's generally applicable prices, which can be enquired from the Provider at any time. Remuneration generally refers to net prices plus the incurred statutory value added tax. The Provider may issue its invoices on a monthly basis. If services are remunerated by expense, the Provider shall document the kind and duration of the work and transmit this documentation along with the invoice.

1.2 All invoices shall be paid on principle at the latest 10 calendar days after the receipt, without deductions and free of costs to the paying agent.

1.3 The customer may offset or withhold payments for reason of defects only insofar as they are actually entitled to claims for payment based on material defects or defects of title in the service. For other warranty claims, the customer may withhold merely a proportionate part of payments in light of the defect. Section 4.1 applies analogously. The customer has no right of withholding if its warranty claim has lapsed by limitation. For the rest, the customer may only exercise a right of offsetting or withholding against uncontested claims or claims established as final and absolute.

1.4 The Provider shall retain the ownership and rights to the services to be granted, until the owed payment has been made in full. Amounts justly withheld due to defects according to Section 1.3, clause 2 will be taken into account. In addition, the Provider reserves the title to ownership until all of its claims resulting from the business relationship with the customer have been settled. The Provider has the right to prohibit the customer from continuing the use of the services for the period of any delay in the customer's payment. The Provider may assert this right only for an appropriate period of time, usually for 6 months at the longest. This shall not constitute a withdrawal from the contract. Sec. 449 (2) BGB [German Civil Code] remains unaffected. If the customer or its buyer returns the services, the acceptance of the services shall not constitute a withdrawal by the Provider, unless it has expressly declared this withdrawal. The same applies if the Provider garnishes the items subject to the reservation of title or the pledging of rights to the items subject to the reservation of title. The customer may neither pledge nor transfer by way of security any items, which are subject to the reservation of title or other rights. As a reseller, the customer shall have a right to resell the items solely in the ordinary course of business, on the condition that the customer has effectively assigned the Provider's claims against the customer's buyers as relates to the resale and that the customer transfers the ownership to its buyer subject to payment. By signing this contract, the customer hereby transfers its future claims against its buyers relating to such sales by way of security to the Provider, who hereby accepts this transfer. If the realisable value of all of the Provider's securities exceeds the amount of the secured claims by more than 20%, the Provider shall release the corresponding portion of the securities on the customer's request.

1.5 If rights to use deliveries and services are permissibly transferred, the customer is obligated to impose the contractually agreed limitations that are applicable to these deliveries and services on the recipient.

1.6 If the customer does not settle a due claim in full or in part by the contractually agreed payment date, the Provider may revoke any agreed payment targets for all claims. The Provider shall furthermore be entitled to make the performance of additional services conditional on prepayment or the provision of securities in the form of a performance bond from a credit institution or credit insurer licensed in the European Union. The prepayment shall cover the respective billing period or – in case of services rendered one time only – their full consideration.

1.7 In the event of the customer's financial incapacity to fulfil its obligations to the Provider, the Provider may terminate the existing exchange agreements with the customer by withdrawal and terminate continuing obligations by cancellation without notice, even if the customer files for insolvency. Sec. 321 BGB and Sec. 112 InsO [German Insolvency Code] remain unaffected. The customer shall inform the Provider at an early point in time about any impending insolvency. Financial incapacity must be assumed if the customer does not pay the owed remuneration after two payment reminders or if two consecutive payment dates are missed for a continuing obligation.

1.8 Fixed performance dates shall be agreed exclusively in explicit, documented form. The agreement on a fixed performance date shall be subject to the proviso that the Provider receives the services from its respective upstream suppliers on time and in accordance with the contract.

## 2. Cooperation, duties to contribute, confidentiality

2.1 The customer and the Provider shall each appoint a responsible contact person. The communication between the customer and the Provider shall take place through this contact, unless agreed otherwise. The contacts shall effect all decisions relating to the performance of the contract without delay. The decisions shall be documented formally.

2.2 The customer is obligated to support the Provider to the necessary extent and create all conditions within its sphere of operations, which are required for the correct performance of the contract. For this purpose, it shall in particular make all necessary information available and enable remote access to the customer's system if

possible. If remote access is not possible for reasons of security or for other reasons, the deadlines affected by this shall extent appropriately; the contractual partners shall agree on an appropriate provision for further effects. The customer shall also ensure that knowledgeable personnel will be available to support the Provider. If it is agreed in the contract that services can be performed at the customer's site, the customer shall make a sufficient number of workstations and equipment available free of charge to the Provider on its request.

2.3 Unless agreed otherwise, the customer shall ensure the proper data backup and precautions for data and components (e.g. hardware, software) safeguards against outages, which are appropriate in terms of their kind and significance.

2.4 The customer shall report any defects in comprehensible form in writing without delay, providing all information required for identifying and analysing the defect. For this, in particular the work steps are to be described, which have led to the occurrence of the defect, the way in which the defect appears and its effects. Unless agreed otherwise, the corresponding forms and processes of the Provider shall be used for this purpose.

2.5 The customer shall support the Provider to an appropriate extent and on request for the review and the filing of claims against other parties as relates to the performance of the service. This applies in particular to claims of recourse of the Provider against its upstream suppliers.

2.6 The contractual partners are aware that electronic and unencrypted communication (e.g. by email) is associated with security risks. Therefore, no claims may be asserted for this type of communication, which are based on the absence of encryption, except it was agreed beforehand to use encryption.

### **3. Disruptions in the service performance**

3.1 If events outside of the Provider's control such as strike or lockout disrupt the adherence to the schedule ("disruption"), the scheduled dates shall be postponed for the length of the disruption, including an appropriate restarting phase if required. Each Party shall inform the other Party without delay of the cause of a disruption, which occurred in its sphere and of the duration of the postponement.

3.2 If the expense increases due to a disruption, the Provider may also demand payment for the extra expense, unless the customer has no fault for the disruption and its cause is outside of its sphere of responsibility.

3.3 If the customer cannot withdraw from the contract and/or if it can demand damage compensation in lieu of performance, because of inadequate performance by the Provider or if such is claimed, the customer shall declare in writing on the Provider's request and within an appropriate period that has been set, whether it will claim these rights or if it still wants the service to be performed. In the case of a withdrawal, the customer shall refund the Provider for the value of the possibility of the prior use; the same also applies in case of deteriorations due to the use as intended.

If the Provider is in delay with the service performance, the customer's compensation for damages and expenses due to the delay shall be limited to 0.5% of the price per completed week of the delay for the part of the contractual service that cannot be used due to the delay. The liability for delay shall be limited in total to at most 5% of the remuneration for all contractual services affected by the delay; in the case of continuing obligations, this shall apply in reference to the remuneration for the respectively affected services for the full calendar year. In addition and primarily, a percentage rate of the remuneration as agreed on the signing of the contract shall apply. This shall not apply if a delay is due to gross negligence or intent by the Provider. Section 6 applies analogously.

3.4 In the event of any delays in the service, the customer shall have a right of cancellation only within the limits of the legal regulations and provided that the delay is at the Provider's fault. If the customer justly claims compensation for damages or expenses due to the delay, it shall be entitled to demand 1% of the price for the part of the contractual service that cannot be used due to the delay and per complete week of the delay, whereas at most 10% of this price in total; for continuing obligations, this shall apply in reference to the remuneration for the respectively affected services for the full calendar year. In addition and primarily, a percentage rate of the remuneration as agreed on the signing of the contract shall apply.

### **4. Material defects and expense refund**

4.1 The Provider grants a warranty for the contractually owed properties and condition of the services. No claims are established for material defects if the Provider's service deviates from the contractual properties and condition only to a negligible extent. Claims for defects shall also not be established in case of excessive or improper use, natural wear and tear, and failure of components in the system environment, non-reproducible software or other errors, which are caused by extraordinary external effects that are unexpected according to the contract. Section 6 applies in addition to damage compensation and claims to expense refunds.

4.2 The limitation period for warranty claims for material defects is one year from the start of the statutory limitation period. The statutory time limits for filing recourse pursuant to Sec. 478 BGB remain unaffected. The same applies in case the law prescribes longer time limits according to Sec. 438 (1) no. 2 or Sec. 634a (1) no. 2 BGB, or in case of an intentional or gross negligent breach of duty by the Provider or fraudulent concealment of a defect, and in cases of injury to life, body or health as well as to claims arising from the Product Liability Act The processing of a notice of a material defects from the customer by the Provider shall only suspend the limitation

period if the legal conditions are given for this. The limitation period will not be started from the beginning for this reason. Subsequent fulfilment (new delivery or reworking) can only have an effect on the limitation of the defect triggering the subsequent fulfilment.

4.3 The Provider can demand remuneration for its efforts if

- a) it commences work based on a notification, without a defect being present, except the customer was unable to recognise that no defect was present; or
- b) a reported fault is not reproducible or the customer otherwise not prove it to be a defect; or
- c) additional expense is incurred because of improper fulfilment of the customer's duties (also see Sections 2.2, 2.3, 2.4 and 5.2).

## 5. Legal defects

5.1 The Provider shall be liable for the infringement on the rights of third parties by its service only to the extent that the service is used in accordance with the contract and in particular in the contractually agreed otherwise unmodified operative environment. The Provider shall be liable for infringement on rights of third parties only within the European Union and the European Economic Area, and at the place of the contractual use of the service. Section 4.1, clause 1 shall apply analogously.

5.2 If a third party claims against the customer that a service of the Provider infringes on its rights, the customer shall inform the Provider immediately. The Provider and, if applicable, its upstream suppliers shall be entitled, but not obligated, to defend against the asserted claims insofar as they are permissible and at their own expense. The customer shall not have a right to acknowledge claims of third parties before it has given the Provider ample opportunity to defend against the rights of third parties in another way and manner.

5.3 If the Provider's services infringe on the rights of third parties, the Provider shall

- a) procure the right for the customer to use the service; or
- b) arrange the service so that it does not infringe on the rights of third parties; or
- c) take back the service against a refund of the remuneration paid for it by the customer (less an appropriate compensation for prior use) if the Provider cannot find another remedy at appropriate expense. The customer's interests shall be duly taken into account.

5.4 Claims of the customer for defects of title shall lapse by limitation according to Section 4.2. Section 6 applies in addition to claims of the customer for damage compensation and expenses, and Section 4.3 applies analogously to additional expenses of the Provider.

## 6. General liability of the Provider

6.1 The Provider shall be liable to the customer in all cases

- a) for damages caused by it and its legal representatives or vicarious agents through intent or gross negligence;
- b) pursuant to the Product Liability Act; and
- c) for damages resulting from injury to life, body or health, for which the Provider, its legal representatives or vicarious agents are responsible.

6.2 The Provider shall not be liable in cases of simple negligence, except to the extent that it has violated an essential contractual duty, the fulfilment of which enables the correct performance of the contract in the first place or the breach of which threatens reaching the purpose of the contract and the fulfilment upon which the customer regularly relies and may rightly rely.

This liability shall be limited to the predictable damage that is typical for the contract. The liability for an individual damage event shall be limited to the contract value and, in case of running remuneration, to the amount of the remuneration per contract year, whereas to no less than €50,000. Section 4.2 applies analogously to the limitation period. The contractual partners may agree in writing, usually subject to separate remuneration, on liability beyond this on the conclusion of the contract. A liability sum agreed in the specific case shall take precedence. The liability pursuant to Section 6.1 remains unaffected by this paragraph. In addition and primarily, the Provider's liability for the compensation of damages and expenses due to simple negligence arising from the respective contract and its performance, regardless of the legal reason, shall be limited overall to the percentage rate of the remuneration as agreed on the signing of the contract. The liability pursuant to Section 6.1 b) remains unaffected by this paragraph.

In addition and primarily, the Provider's liability for the compensation of damages and expenses due to simple negligence arising from the respective contract and its performance, regardless of the legal reason, shall be limited overall to the percentage rate of the remuneration as agreed on the signing of the contract. The liability pursuant to Section 6.1 b) remains unaffected by this paragraph.

6.3 The Provider shall be liable under a written guarantee solely for damage compensation, if this has been expressly accepted under the guarantee. This liability shall be subject to the limitations according to Section 6.2 in cases of simple negligence.

6.4 In the event of a necessary restoration of data or component (such as hardware, software), the Provider shall be liable only for the expense that is required for the restoration with a correct data backups having been made and measures having been put in place by the customer to safeguard against outages. In cases of simple

negligence by the Provider, this liability shall apply only if the customer has made a correct data backup prior to the failure and implemented protective measures against outages as appropriate for the kind of the data and components. This shall not apply if this is agreed as a service to be performed by the Provider.

6.5 Sections 6.1 to 6.4 shall apply analogously to claims for the refund of expenses and other liability claims of the customer. Sections 3.3 and 3.4 remain unaffected.

## **7. Data privacy**

The customer shall conclude the required agreements in terms of data protection regulations with the Provider for the handling of personal data.

## **8. Confidentiality**

8.1 With regard to confidential information the Parties undertake to treat the confidential information exchanged in the context of this contract as confidential without limitation in time and not to exploit this confidential information in either of the Parties' own enterprises, including all affiliates, nor let any other natural persons or legal entities exploit it, nor let it be used in any other way, whether directly or through third parties. The Parties shall agree on appropriate confidentiality measures for the protection of confidential information. The Parties shall in particular conclude appropriate non-disclosure agreements with employees and any third parties if they obtain authorised access to the confidential Information.

8.2 Deemed confidential information is in particular any software as the object of the contract, including source code, any business secret and any information not previously publicly accessible regarding products, processes, know-how, design, formulas, algorithms, drafts, developments, research, interfaces, databases, and other copyrighted works or any other information with regard to the Parties' business activities and their employees, consultants, licensees or other persons attributed to this Party, which is disclosed in the context of this agreement or which is marked as confidential and divulged in any other way in the written, electronic, physical or verbal form.

8.3 The foregoing non-disclosure obligation shall not apply if a Party is obligated by law to disclose the information based on a final ruling by a court or decision by an authority.

## **9. Miscellaneous provisions**

9.1 The customer shall observe the import and export regulations that are applicable to the deliveries or services, especially the relevant regulations of the USA. For cross-border deliveries or services, the customer shall bear all incurred customs duties, fees and other charges. The customer shall process legal or administrative procedures relating to cross-border deliveries or services within its own responsibility, unless expressly agreed otherwise.

9.2 German law applies. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

9.3 The Provider shall perform its services on the basis of these General Terms of Contract and any service-specific terms of contract. General terms and conditions of the customer shall not apply, even if the Provider has not expressly objected to them. The acceptance of the services by the customer shall be regarded, in waiver of the customer's GTC, as an acknowledgement of these General Terms of Contract and any service-specific terms of contract of the Provider. Other terms shall only be binding if the Provider has expressly acknowledged them in writing; the Provider's GTC shall apply in addition.

9.4 Changes and amendments to this contract shall be agreed exclusively in writing. Where the written form (e.g. for termination notices, withdrawals) is agreed, the text form is not be sufficient.

9.5 The place of jurisdiction in relation to a merchant, a legal entity of public law or public-law investment fund is the place of the Provider's registered office. The Provider can also file lawsuit against the customer at the place of its registered office.