

Terms and Conditions of Purchase for Information Technology Services

Applicable to business transactions with companies, legal entities under public law and special funds under public law.

1. Subject matter and Definition

- 1.1 These Terms and Conditions apply to all Contracts by which Buyer orders information technology services.
- 1.2 Information technology services within the meaning of these Terms and Conditions are all services, including consultation, in connection with the development, formulation and practical introduction of computer programs, in particular
 - organisational and other studies, expertises
 - preparation of external target specification, internal target specification, requirement specifications, concepts,
 - production, amendment and supplementation of programs,
 - adaptation of standard programs,
 - training.

2. Conclusion of Contract

- 2.1 Orders, agreements and amendments to the Contract shall only be binding if made or confirmed by Buyer in writing. All correspondence must be conducted with the purchasing department. Any agreement reached with any other department intended to amend agreed terms of the Contract must be expressly confirmed by the purchasing department in writing in the form of a supplement to the Contract.
 - 2.2 The general terms and conditions of Seller are herewith rejected.
 - 2.3 Seller shall treat the conclusion of the Contract as confidential. Seller may only use Buyer as a reference vis-à-vis third parties with the written consent of Buyer.
3. Subject Matter of the Contract
The contractual agreements consist of:
- Buyer's order letter,
 - these "Terms and Conditions of Purchase for Information Technology Services",
 - Buyer's documentation guidelines and
 - the guidelines and technical standards generally applicable to the agreed services which are in force at the time of conclusion of the Contract.

The documents listed above rank according to the order in which they are listed.

4. Prices

- 4.1 The agreed prices and remuneration rates are fixed prices and include regular travelling expenses and travelling time, costs of materials and use of the test equipment of Seller. VAT at the statutory rate shall be added.
- 4.2 If a total price is agreed and if, after conclusion of the Contract, a change of services is agreed resulting in a reduction in the scope of services, an amended total price will be agreed based on the price that formed the basis of the Contract price and taking account of the reduced costs. The same shall apply in the event of an increase in the scope of services which is agreed after conclusion of the Contract, provided that Seller has given written notice to Buyer of the need for a price adjustment before agreement is reached on the change leading to the increase.

5. Technical Objections of Seller

In the event that Seller realises that the service description of Buyer - a concept, other terms of reference or specifications - cannot objectively be executed for technical reasons, that it is faulty or unclear, Seller must notify Buyer hereof indicating its technical reasons in writing without undue delay.

6. Modification of Performance

- 6.1 In the event that Buyer desires a change in the agreed performance after conclusion of the Contract, Seller is obliged to take the requested change into account when rendering performance unless this is unreasonable taking Seller's operating capacity into consideration and provided that Seller notifies Buyer hereof in writing without undue delay, but at any event no later than within 5 working days after receipt of the request for a change.
- 6.2 Within 5 working days of receipt of the request for a change, Seller must notify Buyer in writing whether the change requested by Buyer has any effect on the agreed remuneration or the execution time; if there are any such effects reasons must be given.
- 6.3 If an extensive examination is necessary regarding the question of whether realisation of a requested change is possible or the effect thereof, in particular on the agreed remuneration and the execution time, Seller must notify Buyer hereof in writing within the period stipulated in paragraph 6.2 stating the reasons for and the expected duration of the examination. Conducting such an examination requires a separate agreement.
- 6.4 Pending agreement on conducting an examination pursuant to paragraph 6.3 or on the change requested by Buyer, the services

must be rendered in accordance with the existing agreements applying before the change request, unless Buyer requests a suspension of performance of the Contract pursuant to paragraph 7.

7. Suspension of Performance of the Contract

- 7.1 In the event that an objection is notified by Seller pursuant to paragraph 5 or if a change is requested by Buyer pursuant to paragraph 6.1, Buyer may request suspension of performance of all or individual services at any time. If Buyer does not demand a suspension and Seller realises that a continuation of the work on the basis of the existing specifications would lead to unusable results, Seller must notify Buyer hereof in writing without undue delay.
- 7.2 The parties shall reach a reasonable agreement on the effects of the suspension. Agreed execution times shall be adjusted according to the scope of that part of performance delayed by the suspension but by no more than the number of working days lost on performance of the Contract due to the suspension.

8. Collaboration of Buyer

- 8.1 Buyer shall provide Seller with all the information and documents necessary for contractual performance and shall make the decisions quickly which are necessary for execution of the Contract.
- 8.2 Insofar as services are to be performed on Buyer's premises due to the nature of a project, Buyer will provide the necessary offices, computer time and programs free of charge.
- 8.3 Seller shall demand in writing, giving full details, that Buyer complies with its duty to collaborate if and to the extent that Buyer fails to comply with this obligation of its own accord and if Seller considers itself prevented from the timely performance of its services as a result of such failure.

9. Cooperation between the Parties

- 9.1 Seller and Buyer will each name a specialist person and a deputy who will be available as contact partner during performance of the Contract and who are authorised to make the necessary decisions or to cause such decisions to be made without undue delay. These persons may only be replaced for cause; the other party must be notified hereof without undue delay.
- 9.2 Buyer is entitled to request at any time to inspect performance of the services and be given an explanation of the progress of the work.
- 9.3 Depending on the nature and scope of the project, the parties shall meet at regular intervals to ascertain progress on the project and to discuss outstanding questions. The subject matter and results of the meeting must be recorded in minutes to be signed by both parties.
- 9.4 If it transpires that work progress is too slow with regard to agreed intermediate or completion deadlines, that there are defects in the services or a disproportionate use of Buyer's hardware in relation to the progress made, Seller is obliged, if the Buyer so requests, to remedy this situation without undue delay with no extra cost to Buyer.

10. Employees of Seller, Sub-Contractors

- 10.1 The right to issue technical and disciplinary directives to Seller's employees rests with Seller. This applies even where contractual services are to be performed on Buyer's premises due to the nature of a project.
- 10.2 In the event that an employee used by Seller on the execution of the Contract has to be replaced by another employee for reasons beyond Buyer's control, the familiarisation period is at the expense of Seller.
- 10.3 Seller may only employ sub-contractors with Buyer's prior written consent.

11. Invoicing in case of Termination for Breach of Contract

If Buyer terminates the Contract on account of Seller's breach of Contract, the services rendered shall only be remunerated to the extent that Buyer can make use of them for their intended purpose. Any compensation for damages due to Buyer shall be taken into account in the invoicing.

12. Delivery Dates, Delays

- 12.1 Seller shall inform Buyer in writing without undue delay as soon as it realises that it will be unable to meet agreed delivery dates for whatever reason, stating the reasons therefor. This shall not affect Seller's obligation to meet agreed delivery dates.
- 12.2 If a contractual penalty is agreed in the Contract, this shall fall due if Seller defaults in keeping to the deadline on which the contractual penalty is imposed. Except as otherwise agreed, 0.1% will be charged per calendar day of delay, up to a maximum total of 5% of the total order value. Buyer will claim the contractual penalty no later than at the time of final payment.

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- 12.3 In the event of Seller's default, Buyer shall be entitled to render itself, at Seller's expense, the performance not yet rendered or to have it rendered by a third party at Seller's expense, if a reasonable deadline set by Buyer expires to no avail. As an alternative, Buyer may rescind the Contract if a reasonable deadline set by Buyer expires to no avail. In the case of Contracts for services, the rescission right is replaced by the right to give extraordinary notice of termination of the Contract. Any contractual penalty incurred up to the time of rescission or termination remains unaffected.
- 12.4 In addition to the provisions agreed in the above paragraphs, statutory provisions also apply.
13. Completion of the Services, Examination, Acceptance
- 13.1 Seller shall notify Buyer in writing of completion of the services. Buyer shall examine the services. If this examination shows that the services are in compliance with the Contract, Buyer will declare acceptance of the services.
- 13.2 If part performance is released or accepted, performance of the services as a whole will not be accepted until total acceptance is effected by Buyer with respect to the combination of all part services in compliance with the Contract.
- 13.3 The production, amendment or supplementing of programs shall be additionally governed by paragraphs 13.4 to 13.10 below.
- 13.4 Seller shall install the completed programs ready to operate on the agreed computer platform and supply to Buyer at that time all the documents forming part of the contractual conclusion of its services, including proper documentation.
- 13.5 Operational installation shall be followed by a test phase during which Seller and Buyer will jointly check that the programs comply with the agreed specifications, in particular concerning functionality and performance. Seller is under obligation to provide suitable employees during the test phase for a reasonably sufficient time at no extra cost.
- 13.6 The duration of the test phase and the test criteria shall be agreed in the Contract. If changes in the services are agreed during the execution of the Contract, the test criteria shall be amended accordingly.
- 13.7 Seller shall remedy defects occurring during the test phase without undue delay and prove the result in a test run.
- 13.8 Buyer shall declare acceptance after the successful conclusion of the test phase. The test phase is successful if the programs comply with the agreed specifications.
- 13.9 If the test phase ends partly or wholly unsuccessfully, Buyer is entitled to refuse acceptance. In the event of such refusal, the defects that have occurred must be remedied by Seller without undue delay. When the defects have been reported as remedied, the test phase will be repeated. Seller shall bear the costs of such repetition with the exception of Buyer's personnel costs.
- 13.10 Buyer's acceptance declaration must be given in writing.
14. Claims on account of Defects
- 14.1 The services must comply with the agreed specifications and the applicable directives and technical standards.
- 14.2 Defects notified by Buyer during the limitation period shall be remedied by Seller upon demand by Buyer, without undue delay and at no extra cost.
- 14.3 Program faults which cannot be rectified within a period of reasonably short duration with regard to the impacts of the fault, must be remedied temporarily by a workaround solution that is reasonably acceptable to Buyer; the obligation to finally repair the fault shall remain unaffected hereby. The documentation must be corrected to reflect the fault remedy.
- 14.4 Buyer shall support Seller in rectifying the defect by providing the documents and information needed to analyse the defect.
- 14.5 The limitation period for claims on account of defects is 3 years from acceptance. A longer limitation period may be agreed in the Contract for services tied to certain operational processes of Buyer or Buyer's customer. Buyer is prepared to agree a reasonable maximum period if acceptance is delayed for reasons for which Seller is not responsible. The limitation period for claims on account of defects shall be extended by the duration of the interruption of the use of contractual performance caused by remedying the defect.
- 14.6 A claim on account of defects shall become statute barred 6 months after the defect is reported by Buyer, but at the earliest upon expiry of the limitation period for claims on account of defects.
- 14.7 In the event that a defect is not rectified prior to expiry of a period set by Buyer for subsequent performance, Buyer may remedy the defect itself at Seller's expense or have it remedied by a third party at Seller's expense. If it is impossible to rectify the defect or if it is unreasonable to expect Buyer to effect the remedy, the right to rescind the Contract or demand a reduction in purchase price remains unaffected.
- 14.8 Defects attributable to the performance description or other specifications of Buyer are not subject to the warranty obligation of Seller; this does not apply to the extent that Seller is in breach of its notification obligation pursuant to paragraph 5.
- 14.9 In addition to the provisions agreed in the above paragraphs, statutory provisions also apply.
15. Data Protection
- Seller may only employ persons to execute the Contract who have been committed by Seller to a secrecy obligation pursuant to the Federal Data Protection Act (Bundesdatenschutzgesetz). Seller must ensure that all the persons it entrusts to handle or execute the Contract observe the provisions of the Federal Data Protection Act. Seller must guarantee the necessary data saving measures pursuant to the Federal Data Protection Act and shall provide Buyer upon request with the information and evidence required by the Federal Data Protection Act to monitor the order. Buyer is entitled to examine the data saving measures taken by Seller and to verify compliance with the provisions of the Federal Data Protection Act on Seller's business premises.
16. Confidentiality
- 16.1 Seller is under obligation to treat as confidential all information Buyer makes available to Seller (e.g. business and operating secrets, data and their sequence and results, other technical or commercial information of any kind) and to use it only in performance of the Contract. The information may not be disclosed to third parties in any manner whatsoever; this does not apply to employees and other agents to the extent that they need the information to perform the Contract.
- 16.2 The confidentiality obligation shall survive termination of the Contract.
- 16.3 The confidentiality obligation does not apply to information which
- is common knowledge or
 - has come to the knowledge of Seller from a third party without there being any breach of a confidentiality obligation.
- 16.4 To the extent that Seller receives or stores confidential information in electronic form, Seller must protect it against unauthorised access in the same way as personal data in accordance with the Federal Data Protection Act.
- 16.5 Seller must commit its employees and other persons it avails itself of to perform its contractual obligations, to a confidentiality obligation in accordance with the foregoing confidentiality provisions and shall ensure that such obligation is complied with.
17. Saving of Data
- Seller shall continually save the services which have been electronically created in part results corresponding to the progress of the project and incorporating the program environment necessary for this. The backup copies must be transferred to external storage and be professionally stored.
18. Documents and Programs of Buyer
- 18.1 Documents of any kind, including programs, which have been provided to Seller by Buyer, remain the property of Buyer. Copies may only be made for the purposes of executing the Contract. Originals and copies shall be carefully stored on behalf of Buyer and returned to Buyer after the Contract has been executed.
- 18.2 Seller may only use the programs provided by Buyer to the extent that this is necessary to execute the Contract.
19. Right of Use
- 19.1 Buyer is hereby granted an irrevocable, exclusive licence to use the programs and other works resulting from the services provided by Seller to Buyer, including portions thereof. Such licence is perpetual and in effect worldwide, and shall include any method or mode of use, including the right to modify, reproduce, amend, and extend such programs and other works, and to grant non exclusive licences to third parties, to the extent the granting of such licenses is not restricted as set forth below in section 19.2.
- 19.2 In the event that there are rights of third parties in programs which have been incorporated in the services or in other third party work results which preclude the acquisition of a licence pursuant to the previous paragraph, then the scope of the licence herein granted to Buyer shall be agreed upon by Buyer and Seller in the Contract.
- 19.3 Seller retains the right to continue use of standard programs used by Seller in producing the work results, program modules, tools and know-how developed by Seller for all purposes, including third party orders, provided, however, Seller shall not be authorized to reproduce, process or otherwise use the work results and solutions produced for Buyer, either in whole or in part.
- 19.4 Seller shall not be authorised to publish the work results of any kind produced for Buyer, including parts thereof, without the prior written consent of Buyer.

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20. Program Code

- 20.1 Programs will be made available to Buyer in a machine readable code.
- 20.2 Programs developed individually for Buyer shall additionally be supplied to Buyer in a source code with manufacturer documentation. Copies of the source code and of the manufacturer documentation must be given to Buyer at acceptance and must equate to the program status upon termination of the test phase.
- 20.3 Seller shall, without undue delay, incorporate in the source code and the manufacturer documentation any work undertaken on the programs as part of fault rectification. A copy of the respectively updated version of the program must be sent to Buyer without undue delay.

21. Industrial Property Rights of Third Parties

- 21.1 Seller warrants that the contractual use of its services does not infringe industrial property rights of third parties.
- 21.2 In the event of an infringement, Seller indemnifies Buyer against all claims asserted against Buyer by third parties on account of an infringement of industrial property rights. In the event of an infringement, Seller is further obliged either to procure for Buyer free of charge a licence authorising the contractual use of the respective services or to change the services in such a way that the infringement ceases but performance is still nonetheless in compliance with the Contract.

22. Payment

- 22.1 Buyer shall only make payment upon presentation of an invoice, which is in accordance with applicable VAT regulations. All payments made by Buyer must be set out in the final invoice.
- 22.2 Payments by Buyer shall not be deemed to constitute recognition of Seller's invoicing.
- 22.3 Buyer may set-off all receivables due from Seller to Buyer, Aventics GmbH and those domestic companies in which Aventics GmbH has an indirect or direct majority shareholding, against all claims which Seller has against Buyer.
Upon request Buyer will provide Seller with detailed information of the group companies covered by this provision.
- 22.4 Seller's claims under this Contract may be assigned to third parties with the written consent of Buyer.

23. Place of Performance, Partial invalidity, Place of Jurisdiction, Applicable law

- 23.1 Place of performance of Seller's services is the place where the services will be used; place of performance for payments by Buyer is the latter's head office.
- 23.2 If any individual provision of the Contract is invalid, the other provisions remain binding.
- 23.3 At Buyer's choice, the courts of Hannover, Germany, or the court having general jurisdiction over Buyer shall have jurisdiction on transactions with merchants, legal entities under public law and special funds under public law. Buyer may, however, also sue Seller at the court having general jurisdiction over Seller.
- 23.4 The contractual relations shall be governed exclusively by German law to the exclusion of the provisions of the conflict of laws and the UN Convention on the International Sale of Goods (CISG).