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The German Association for Information Technology, Telecommunications and New Media [Bundesverband Informationswirtschaft, Telekommunikation und Neue Medien e.V.] - BITKOM - recommends on a non-binding basis that its members use these General Terms and Conditions for transactions that do not involve consumers. It is left to the addressees' discretion to follow this recommendation or to use other General Terms and Conditions.

BITKOM Contractual Conditions for the Developing of Software - VES BITKOM –

1. Subject matter

- 1.1** The provider shall develop software for the customer subject to the description of performance (*Leistungsbeschreibung*) forming the basis for the contract (see Clause 2.2).
- 1.2** The copy of the software to be furnished to the customer by the provider shall contain only the object code.
- 1.3** The software shall be handed over together with operating instructions (user documentation or online help). The operating instructions shall be written in the same language as the software user interfaces, unless otherwise agreed.

The delivery or production of more detailed documentation shall require a separate written agreement in particular on the contents and scope.
- 1.4** The provider shall produce the software and operating instructions (jointly: subject matter of the performance) in compliance with the principles of professional diligence (*Grundsätze der ordnungsgemäßen Berufsausübung*).
- 1.5** Analysis, planning, consulting and training services are not the subject matter of this contract and not owed by the provider.

2. Co-operation between contractual partners

- 2.1** The customer shall notify its technical and functional requirements for the software to the provider fully and in detail, and shall furnish the provider all the documents, information, and data required for developing the software in good time.
- 2.2** The description of performance shall be based on the customer's technical and functional requirements as notified by the customer. The description of performance shall definitively define the owed nature of the software. Changes to the description of performance shall be effected solely subject to Clause 3. The provider shall render analysis, planning and consulting services in conjunction with the description of performance only on the basis of a separate agreement (see also Clause 1.5).
- 2.3** The provider shall involve the project manager nominated by the customer as contact person (Clause 2.1 BITKOM General Terms and Conditions) (AV BITKOM) in so far as this is required to carry out the agreement. The contact person's decisions shall be recorded in writing.
- 2.4** The customer shall have no right to insist on the performance being rendered on its premises.

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3. Change management procedure

Either contractual partner can suggest changes to the description of performance (see Clause 2.2) and the rendering of the performance. The following procedure shall be adopted:

- 3.1** The provider shall consider any suggestion for changes submitted by the customer and state whether a comprehensive analysis of this suggestion for changes is required or not.
- 3.2** If a comprehensive analysis of the suggestion for changes is required, the provider shall inform the customer within a reasonable period of time about how long this is expected to take and the remuneration owed. The customer shall place or cancel the analysis order within a reasonable period of time.
- 3.3** If a comprehensive analysis of the suggestion for changes is not required or the order for analysis is placed, the provider shall either
- a) inform the customer that the suggestion for changes is not possible for the provider within the agreed services or
 - b) submit to the customer a written proposal to carry out the changes (change proposal - *Änderungsangebot*). The change proposal shall contain in particular the changes to the description of performance and their impact on the performance period, the planned deadlines, and the remuneration.
- 3.4** The customer shall either reject a change proposal or accept it in writing or in the due form agreed by the contractual partners within the acceptance period stated therein (validity period- *Bindefrist*).
- 3.5** The provider and customer can agree that services affected by a suggestion for changes shall be suspended until completion of the analysis or - in so far as a change proposal has been submitted - until the end of the validity period.
- 3.6** Until the change proposal has been accepted, the work shall be continued on the basis of the previous contractual agreements. The performance periods shall be extended by the number of calendar days work was suspended in conjunction with the suggestion for changes or its analysis. The provider can request a reasonable remuneration for the duration of the interruption, unless the provider has otherwise deployed the staff affected by the interruption or maliciously failed to do so.
- 3.7** Upon request of the provider, the change management procedure shall be documented in writing or in text form on a printed form of the provider, unless otherwise agreed. Any change in the description of performance shall be agreed in writing or in another form as agreed by the contractual partners.
- 3.8** Clauses 3.2 to 3.7 shall apply accordingly for suggestions for changes proposed by the provider.
- 3.9** Suggestions for changes shall be submitted to the contractual partner's project manager (Clause 2.3).

4. Rights of use and protection against unauthorized use

- 4.1** Upon complete payment of the remuneration owed, the provider shall grant the customer the non-exclusive right to use the subject matter of the performance for the contractually envisaged purpose in its company for an unlimited period of time, unless otherwise agreed. The customer can transfer the granted right of use of the services handed over by the provider to a third party only with complete surrender of its own rights.
- 4.2** Otherwise all rights shall remain with the provider.
- 4.3** The provider shall be entitled to take suitable technical actions to protect against contractually noncompliant use.

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The use of the software on an alternative or subsequent configuration may not be materially impaired as a result.

- 4.4** The provider can revoke the customer's right of use if the customer is in material breach of restrictions of use or other provisions for protection against unauthorized use (see also Clause 5.8). The provider shall first set the customer a deadline to rectify the situation. In the event of repetition or in particular circumstances that with due regard to the interests of both parties justify immediate revocation, the provider shall be entitled to revocation without the setting of a deadline. The customer shall confirm to the provider in writing that it has ceased the non-compliant use.

5. Duties of the customer

- 5.1** The customer shall ensure that expert personnel are available to provide support for the provider during the project and, after handover, for the consistency inspection (*Beschaffenheitsprüfung*) (Clause 7.1) and the use of the software.
- 5.2** Upon request by the provider, the customer shall provide suitable test cases and data in a machine-readable form for the consistency inspection. If the customer fails to provide such test cases and data, the provider itself can select and create suitable test cases against additional remuneration.
- 5.3** The customer undertakes to download software provided for this after notification of its availability.
- 5.4** The customer shall report faults in particular as per Clause 2.3 BITKOM General Terms and Conditions (AV BITKOM). Unless otherwise agreed, the provider's pertinent forms and procedures shall be used.
- 5.5** In so far as required, the customer shall support the provider during the rectification of faults, in particular by enabling remote access to the customer system and providing other analysis material.
- 5.6** The customer shall immediately inform the provider about changes in the use conditions after the handover.
- 5.7** Unless otherwise agreed, the customer shall also retain all the documents, information, and data furnished to the provider in such a manner that they can be reconstructed in the event of damage to and loss of data media.
- 5.8** The customer may not undertake anything that could facilitate unauthorized use. In particular it may not attempt to decompile the software unless authorized to do so. The customer shall promptly (*unverzüglich*) inform the provider if and when it becomes aware that within its scope there is a risk of or has been unauthorized access.
- 6. Handover and transfer of risk (*Übergabe und Gefahrübergang*)**
- 6.1** Unless otherwise agreed, the provider can provide the customer with the subject matter of the performance by electronic transfer or availability for downloading. If the subject matter of the performance is made available for downloading, the provider shall notify the customer when it is thus available.
- 6.2** In so far as the subject matter of the performance is transferred electronically, the risk of accidental loss shall pass to the customer upon receipt by the tele-services provider engaged by the provider for the further distribution.

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6.3 In so far as the subject matter of the performance is made available for downloading, the risk of accidental loss shall pass to the customer upon availability and notification of the customer to that effect.

7. Consistency inspection and the customer's warranty rights (*Beschaffenheitsprüfung und Mängelansprüche des Kunden*)

7.1 The customer shall promptly (*unverzüglich*) inspect all the provided subject matter of the performance, in particular software or executable parts of the software agreed as part delivery - as a rule within 14 calendar days - for faults, in particular for the contractually agreed characteristics (consistency inspection). To this end, the customer shall use realistic test cases and data suitable for the software. The provider can liaise with the customer about the test procedure and also provide on-site support for the consistency inspection.

7.2 During or after the consistency inspection, the customer shall promptly (*unverzüglich*) notify any faults arising, at the latest seven calendar days from knowledge thereof (Clause 5.4).

7.3 The commercial duty of inspection and notification (*kaufmännische Untersuchungs- und Rügepflicht*) shall also apply (Section 377 German Commercial Code - *HGB*).

7.4 The provider warrants that subject to contractually compliant use the software meets the contractually agreed nature. Material faults (*Sachmängel*) shall be governed in particular by Clause 4 BITKOM General Terms and Conditions (AV BITKOM). Legal faults (*Rechtsmängel*) shall be governed in particular by Clause 5 BITKOM General Terms and Conditions (AV BITKOM).

7.5 The customer shall have warranty claims only if reported faults are reproducible or otherwise demonstrable. Clauses 5.4, 7.2 and 7.3 shall apply in particular for the reporting of faults.

7.6 If the customer is entitled to warranty claims, it shall initially have only the right to subsequent performance (*Nacherfüllung*) within a reasonable period of time. The subsequent performance includes either repair or provision of replacement software at the provider's discretion. The interests of the customer shall be duly taken into consideration when the choice is made.

7.7 If the subsequent performance fails or cannot be carried out due to other reasons, subject to the statutory preconditions the customer can reduce the remuneration, rescind and/or - under Clause 6 BITKOM General Terms and Conditions (AV BITKOM) - demand damages or compensation of expenses.

If the subsequent performance is delayed, the damages or compensation of expenses owed by the provider shall be governed by Clause 3.4 BITKOM General Terms and Conditions (AV BITKOM). Damages or compensation of expenses shall be governed in particular by Clause 6 BITKOM General Terms and Conditions (AV BITKOM).

The customer can exercise any choice it has with respect to warranty claims within a reasonable period of time, as a rule within 14 calendar days.

8. Validity of BITKOM General Terms and Conditions (AV BITKOM)

In addition, the BITKOM General Terms and Conditions (AV BITKOM) shall also apply.

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The contractual terms and conditions are based on non-binding terms recommended by BITKOM e.V. and approved by the Federal Cartel Office.

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