

**Convenience Translation made by Utimaco (in case of doubt the German version shall take precedence)**



*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 Services - DL BITKOM –**

### **1. Subject matter**

- 1.1** The provider shall render the service (*Dienstleistung*) solely subject to the conditions in the contract and those agreed below in return for the contractually agreed remuneration. Responsibility for the project and its outcome (*Projekt- und Erfolgsverantwortung*) shall be borne by the customer. The provider shall render the service in compliance with the principles of professional diligence (*Grundsätze der ordnungsgemäßen Berufsausübung*).
- 1.2** The subject matter can be a performance to be rendered on one occasion, rendered in various parts, or on a long-term basis.

### **2. Rendering of the service**

- 2.1** The place for rendering the performance shall be the provider's registered offices, unless otherwise agreed.
- 2.2** The provider shall select the employees for rendering the performance. The customer shall have no right to the performance being rendered by particular employees of the provider.
- 2.3** The provider shall determine how the performance shall be rendered.
- 2.4** The customer shall have no right to issue instructions (*weisungsbefugt*) to the provider's employees detailed to render the performance.
- 2.5** In so far as the provider has to present the results of the service in writing, only the written presentation shall be definitive.

### **3. Duties to cooperate**

The customer shall ensure that the provider's contact partner nominated to him is provided with all the necessary documents, information, and data for rendering the service fully, correctly, in good time, and free of charge, in so far as the provider does not have to provide the same. In addition, the customer shall ensure that the same are updated. The provider shall be entitled to rely on these documents, information, and data being complete and correct, in so far as they are not obviously incomplete or incorrect.

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**4. Rights of use**

- 4.1** The provider shall grant the customer the non-exclusive and non-transferable right to use the results of the service (*Dienstleistungsergebnisse*) it has rendered and provided to the customer under the contract for its own internal purposes within the contractually envisaged purpose for an unlimited period of time, unless otherwise agreed.
- 4.2** Otherwise all rights shall remain with the provider.
- 4.3** 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. The provider shall first set the customer a deadline to rectify the situation (*Nachfrist zur Abhilfe*). 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. Duration**

- 5.1** If the contract has been concluded for an indefinite period of time, it can be terminated with notice of 3 months to the end of a calendar year. This right of termination shall apply for the first time for the end of the calendar year following the year in which the contract was concluded. This right of termination shall be without prejudice to any agreed minimum term.
- This shall not apply if otherwise agreed.
- 5.2** Rescission (*Rücktritt*) from the contract is hereby excluded. The contract can however be terminated by the provider or the customer for good cause (*aus wichtigem Grund*) without notice.

- 5.3** Declarations of termination are only effective when made in writing.

**6. Remuneration**

- 6.1** The provider can adjust remuneration annually to general list prices.

The customer shall have a right to termination if the remuneration rates are increased by more than five percent. The provider shall inform the customer about any such increase two months in advance. The customer shall be entitled to terminate the Agreement within one month from receipt of the notification as per Clause 5.3 for the date such increase is to take effect.

- 6.2** Expense verifications shall be deemed approved in so far as the customer does not submit a detailed written objection within 21 days of receipt.
- 6.3** Traveling costs and expenses and also other expenses shall be reimbursed to a reasonable amount, but not less than the tax allowances therefor.

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Traveling time shall be deemed working time.

- 6.4** The provider can demand additional remuneration of its efforts in so far as additional effort is incurred because the customer has not properly complied with its duties (see also Point 3).

**7. Temporary non-performance (*Leistungsstörungen*)**

- 7.1** If the service is not rendered as contractually agreed and the provider is responsible for this (temporary non-performance - *Leistungsstörung*), it shall be obliged to render the service as a whole or in parts as contractually agreed without additional costs for the customer within a reasonable period of time, unless this is possible only with disproportionate expense.

This duty of the provider shall only arise if the customer immediately submits a written complaint about the temporary non-performance, at the latest however within two weeks from knowledge of the same, unless otherwise agreed.

To this end, the customer shall appropriately monitor the rendering of the service by the provider.

- 7.2** If the provider is not responsible for a contractually agreed performance, it shall make reasonable effort to offer its contractually compliant performance to the customer. If the customer accepts this offer, the provider can charge the related expense and proven costs.
- 7.3** Any further damages or compensation of expenses shall be governed by Clause 6 BITKOM General Terms and Conditions (AV BITKOM).

**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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