

General terms and conditions (GTC/effective 12/2010) for software project contracts

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1. Application of the performance conditions

1. The current general terms and conditions (GTC) govern completion, content and implementation of contracts for work labor in the computer science field as well as the maintenance of custom software. They apply to all services of itemis AG (hereafter referred to as „contractor“) to entrepreneurs, corporate bodies under public law and public fund assets. All, also future, legal relationships between the customer and contractor are based upon the GTC of the contractor in its current form. Deviating terms and conditions of the customer become vetoed. The GTC of the customer apply even if in this knowledge conflicting or deviating terms of the customer implements the software development unconditionally.

2. Provided that framework and other contracts between the parties are completed, they have priority. They will however, provided that no specific regulations are made, be completed by the current performance conditions.

3. A contract for services as defined by the GTC exists, provided that contents of the contract is a (success) definite work result. In particular, the adaptation of software and the production of custom software and programming tools are hereof included.

2. Offers, order confirmation

1. The offers of the contractor are subject to change and must be in written form like all arrangements between the customer and the contractor. The offer includes regular prices, a technical specification and an activity plan and a time schedule. The parties agree therein that the detailed specification only takes place within the framework of the creation of the software. Should it emerge with the creation of the detailed specification for the implementation that an additional expense other than in the estimated offer is required, the parties will be advised about this change according to subparagraph 5.1. Insofar as no composition between the parties is met, the customer can request a change to the contractor according to subparagraph 5.2 ff.

2. For time, nature and extent of the performance and price, the written offer of the contractor is binding insofar as it was accepted by the customer.

3. Subject matter of contract

1. The contractor rendered custom software for the customer (contractual software), whose technical specification is approved by the customer. This technical specification describes correctly, completely and finally the scope of services of the contractor for the software to be created. It is an integral part of the contract and stipulated in the offer.

2. The contractor will deliver the software after completion to the customer on a conventional data storage device, insofar as otherwise agreed for this purpose between the contractual partners, at the same time also the source code, the operating instructions (user manual) and the installation instructions.

3. The eventual installation and start-up procedure and implementation respectively is not part of the contract. If and when the contractor shall support the customer with these procedures, the contractual partner will separately conclude agreements for this purpose.

4. Implementation of the performances, specifications

1. Appointments

Appointments are non-binding, unless they are expressly and in writing from the contractor referred to as binding. Appointments are not referred to as binding, the contractor comes at the earliest by means of a written request by the customer, which must take place no earlier than one month after the issue date, in arrears. In the case that the binding dates or deadlines are not met or the written request by the customer in accordance with the preceding sentence is not followed, the customer

has a reasonable extension of time of at least two weeks (in addition) to clarify the explanation to the contractor, that he will, after expiration of this deadline, resign from the contract or terminate it. In the case of the unsuccessful expiry of this deadline, the customer can resign from the contract or terminate it.

2. If one of the two contractual partners recognize that the technical specification is flawed, incomplete or not objectively feasible or inconclusive; then the respective contractual partner will promptly notify the other about this.

The contractual partner will in collaboration take care of correction and adjustment of the technical specification, whereby the specification of the technical guidelines as such concern of the customer, of which implementation and incorporation in the technical specification is the concern of the contractor.

3. Consequences and course of action with inadequate technical specification

In the case that the technical specification for the implementation by the contractor is not yet sufficient, the contractor is entitled to surrender his performance to the extent such as it is possible without involvement of the customer.

5. Changes in the performances

1. Change Request

Both contractual partners are entitled to request, under specification of good cause of the other contractual partner, changes to this contract or the (respective) technical specification or to consult and negotiate the detailed specification/s.

2. Verification of the change request

Provided that the contractor wants changes in already approved specifications or detailed specifications, the customer will give gainful payment for time at an hourly rate of 120.00 EUR per hour and material base, examine the resulting expenditure as well as whether the desired change is viable and then as quickly as possible inform the contractor about what changes in particular result in consideration of the expected costs and time schedule.

Where possible and necessary, the contractor will also examine as to what extent any such changes to date have effects on implemented performances and their usability.

3. Interruption to the examination of changes

Contrary to payment of the downtime, the customer can ask for agreement on a change request partially or completely to interruption of the implementation. Potential agreed performance deadlines and time schedules extend accordingly to the downtime and by the time it takes the contractor to further provide the resumption of the work to organize and the necessary resources after an interruption.

4. Change specification

The parties will put down the desired changes in a change specification or detailed change specification in written form and jointly adopt these changes.

5. Lack of agreement on change

When no agreement is achieved over a change request, the parties will, provided that they meet no other agreement, implement the project corresponding to the original specification or detailed specification.

6. Assignment of rights

1. Assignment of rights permanently

The contractor concedes the customer with the handover of the developed software the simple right (not exclusive) to use the program permanently.

Provided that open source-software is used, the deployed open source-software license currently in force takes effect (ELP, LGPG, APL, etc.).

2. Installation, loading, running

The contractor is entitled to install, load and run the program on any number of computers, but not give copies to third parties (exception: see para. 5).

3. Backup copies

In addition, the customer is entitled to create backup copies and regular backups within reasonable quantity.

4. Adaption right

The customer is in the event entitled to consider establishment of interoperability changes necessary or to remove an error in the software. For these cases, para. 9.10 is to be taken into account.

5. Transfer

The customer is entitled to sell, however only altogether once, the software to a third party. In this case the customer will transfer or will delete all copies made by him to the software passed to the buyer and/or customer.

A further distribution or sub-license requires the approval of the contractor and should be remunerated accordingly.

6. Copyright notes

Copyright and other property rights within programs may neither be deleted nor altered. They are to be transferred with each copy.

7. Organization of the project, participation of the customer

1. Collaboration, participation

The project requires a close collaboration of the parties. The time scheduling comes from a successful engagement of the parties within the framework of the project to produce performances and concessions. The parties have set the up to now established duties in an activities and time schedule.

The customer is also obligated to collaborate and for the rest, especially in the provision of test cases, test data, test system and suitable staff.

In terms of the testing phases and their sequence and detailed implementation, the parties have determined the details in the activities and time schedule. If and when this was not yet sufficiently carried out concretely, the contractual partners will establish suchlike rules in accordance with the following clauses.

2. Contact person

Both contractual partners will each designate a contact person and substitute, that is able to provide and receive binding explanations for the respective parties.

The contact person and their substitute respectively will make decisions quickly or make for last-minute decisions.

The contact person and their substitute respectively may only be exchanged during the project for a compelling reason.

1. Project meetings

The contact person will regularly undertake project meetings.

The parties will in the course of this alternately keep a report of the project meetings and submit it within one week to the other contractual partner.

Provided that this is not forwarded within one week upon receipt of the report, this detail is considered approved. The reports will be forwarded by either party to the members of the steering committee for information.

2. Form of the project decisions

Full project decisions are recorded in writing.

3. Escalation procedures

The contractual partners form a steering committee for voting within the framework of the project consisting of at least one member of each party.

The members of the steering committee shall be named no later than at the suggestion of either party in writing within 5 calendar days of a request to the other party.

If on the level of the contact person a consensual decision, voting agreement etc. cannot be reached, each contract partner is entitled to request the decision by the steering committee. They however have to inform each contact person.

The contact person will then notify in writing each of the facts to the steering committee, showing the basis for decision making. The steering committee will then try to reach a consensual decision within two weeks on request of the decision by the steering committee which is documented in writing.

4. Employee qualifications

Both contractual partners will make available or use qualified employees with sufficient practical experience to provide the service.

8. Payment

1. Price

The prices of the services generally result from the single contract. If not otherwise agreed in single cases, the payment of the contractor's service results from the expenditure of time with an hourly rate of 120.00 EUR. All tax-deducted prices are to be paid plus the effective value added tax reported on the invoice.

Payment date

Unless agreed otherwise in single cases, the payment dates are due as follows:

30% of the agreed payment is to be paid on acceptance of the offer,

40% of the agreed payment is to be paid on deployment of the software for approval

30% of the agreed payment is to be paid on effective approval.

The agreed price is to be paid within 14 calendar days of admission of a duly invoice.

9. Defects of quality and title

1. Scope of application

The contractor provides the contractual services in a way, that these substantially fulfill the quality criteria. A defect as of quality is at hand, if the contract software with documentation does not feature the contractual agreed quality. The contractual agreed quality results from the functional specification.

With defects of title the following directives are applied (q.v. para. 12)

The contractor does not guarantee in any kind the functionality of the software, the contractor develops with programming tools developed by the contractor. In addition the contractor does not guarantee the continued compatibility of the software and interfaces to the solutions of the customer. The quality control of both the code produced by the contractors programming tools and the executable binary files is exclusively in the responsibility of the customer.

2. Examination and notice of non-conformity

After handing the program over to the customer, the customer immediately checks the software for possible defects and directly reports them to the contractor. This obligation results from § 377 HGB. If the customer violates this obligation, he loses the rights concerning defects stated in the following paragraph as to such defects of quality, which would have been clear in an initial proper examination.

3. Report of defects by the customer

Possible defects are to be documented by the customer in a comprehensible manner and communicated directly after detection to the contractor in written form.

4. Supplementary performance

If the customer communicates a defect according to para. 3, the contractor is bound to provide supplementary performance.

The contractor is entitled to provide the supplementary performance of his choice by improvement or by replacement. The customer may insist on improvement or replacement within an adequate period if the other type of supplementary performance is unacceptable to him.

The removal of defects by the contractor can take place by phone, in written form or as an electronic instruction for the customer.

Possible additional effort for the contractor arising by reason, that the contractual software is relocated to a different location as the place of business of the customer as stated above, is defrayed by the customer.

If it emerges, that a defect communicated by the customer does not exist or is not reducible to the contractual software, the contractor may charge the effort for analysis and other processing according to the current price listing for supply of services of the contractor to the customers account.

5. Reduction or resignation

If the contractor does not succeed in the supplementary performance within an adequate period, which allows at least two trials of improvement, the customer may set a final time limit in which the contractor should be able to provide two trials of improvement. In case the contractor is unsuccessful within this final time limit, the customer is entitled to either reduce the

payment or to resign from the contract.

To await the deadlines by the customer is legally superfluous, if they are not reasonable to the customer, particularly, if the contractor refuses the supplementary performance irrevocably and seriously.

The supplementary performance does not finally fail with the second trial. Rather the contractor does have numerous trials on supplementary performance within the time limit depending on the kind of defect, special circumstances (personnel and the like) as well as the kind of software involved (participation of third parties and the like). The contractor is bound to communicate these circumstances after an expiration of an adequate time limit and ask for feedback within an adequate time limit on how to proceed.

6. Compensation and reimbursement of expenses
Besides resignation or reduction the customer may claim compensation instead of provision of service or reimbursement of expenses, if the contractor is to blame.

7. Narrowing the claim on insubstantial defects

The right for resignation or compensation in lieu of the full provision of service is only effective with substantial defects.

8. Compensation for use in resignation

In the case of a rightful resignation on the part of the customer, the contractor has the right to demand an adequate compensation for use of the application to the customer up to resignation of contract. This compensation is calculated based on a four-year usage period of the applications; whereas an adequate deduction for the defect leading to the resignation is provided.

9. Limitation period

Entitlements respective defects of quality and title are limited to the period of one year after handover of the program. This is ineffective in the case of para. 11.

10. Change of programs by the customer

If the customer changes programs or commissions changes through third parties, entitlements for defects of quality and title are dropped, except in the case, that the defects are not based on the changes and error analysis and improvement are not compromised.

11. Fraud, warranty

In case of fraud or in case of acceptance of the warranty by the contractor, the statutory warranty conditions remain unchanged.

12. Defects of title

The customer and/or third party are holding the copyrights of the programs. A defect of title is at hand, if the contractor does not effectively provide the necessary rights for legal utilization.

If a third party claims violation of property rights against the customer caused by usage of the programs, the customer is entitled to immediately inform the contractor and to cede the defense against these claims to the contractor as far as possible. Hereby the customer is entitled to support the contractor with any reasonable support. In particular the customer will fully communicate the necessary pieces of information on the usage and possible adaptations of the program in written form and supply him with the necessary documents.

Insofar as rights of third parties are violated, the contractor may on his choice apply improvements by

- a) obtaining the necessary rights on behalf of the customer from the copyright holder, or by
- b) adapting the copyright-violating software without respectively with - for the customer - acceptable impact on the functionality, or by
- c) exchanging the copyright-violating software without respectively with - for the customer - acceptable impact on the functionality by a software, whose legal usage does not violate copyrights, or by
- d) delivering a new version of the program, whose legal usage does not violate any copyrights of third parties.

For the rest the regulations of para. 9 for defects of title are effective accordingly.

10. Limitation of liability

1. Area of application of the regulation

The contractor is liable on compensation arising from any legal matter according to these regulations.

2. Limitation of liability

The liability of the contractor for small negligent violations of obligations is excluded if these are not caused by harm of life, body or health or concern guarantees or claims under the product liability act

are affected. Furthermore the liability for violations of obligations, whose compliance is essential for the fulfillment of the contract and on whose compliance the customer may rely on (cardinal obligation), remains untouched. The same is to be applied for violation of obligations by our assistants. Furthermore the customer is liable for negligent violations of obligations of essential legal duties endangering the contractual goal only in level of the amount of foreseeable damage and limited to the level of the amount stated in the particular contract respectively in continuous contracts to the level of the amount for the policy year. In these cases no liability is granted for oblique damages, secondary damage by defects or lost profit.

3. Contributory negligence

If the damage is the fault of both the contractor and the customer, the customer is to be charged for his contributory negligence.

11. Data backup

The customer is responsible to backup his data on a regular basis. In the case of a data loss caused by the customer, the customer is therefore only liable for the costs of reproduction of the data, the produced security backup and the costs for reproduction of data, that would also have been lost if properly saved.

12. Non-disclosure/data protection

1. The contractual partners are obliged to handle confidential information and documents of the other contractual partner, either being apparently confidential or being identified as such by the other contractual partner, as company secret.

2. The customer will handle all delivered programs, codes and documentations as well as concepts by the contractor as company secrets of the contractor.

3. The employees of the contractor are bound to data secrecy according § 5 of federal data protection act. Furthermore the contractor is responsible to fulfill the laws and orders on data protection and data safety.

13. Miscellaneous

1. Against claims of the customer, the contractor can only balance with indisputable and legally binding claims.

2. This contract is subject to German rights. The CISG (United Nations Convention on Contracts for the International Sale of goods) is excluded.

3. Place of jurisdiction and execution is Lünen .

4. Changes of and amendments to this contracts are required in written form. This includes changes of this regulation.

5. If any regulations of this contract are or become in whole or partly not effective in law or not practicable, the other regulations remain valid. The same is true in case the contract contains a gap in regulations.