

# **General contractual terms of Bitkom**

## **-AV Bitkom-**

### **1. Remuneration, payment, service protection, deadlines**

- 1.1** Unless agreed otherwise, remuneration is calculated according to expenditure at the provider's prices generally applicable at the time of contract conclusion. Remuneration essentially comprises net prices plus statutory value-added tax incurred.

The provider can invoice monthly. If services are remunerated according to expenditure, the provider shall document the nature and duration of the activities, and submit this documentation with the invoice.

- 1.2** All invoices must be paid no later than 14 calendar days after receipt, free of charges for the recipient and without any deductions.

- 1.3** The customer may offset or withhold payments due to defects only insofar as said customer is actually entitled to payment claims based on material defects or defective titles related to services. For other claims arising out of defects, the customer may withhold payments only proportionately, taking the defect into consideration. Item 4.1 applies correspondingly. The customer has no right of retention if their claim arising out of defects has lapsed. Furthermore, only claims which are undisputed or established in a legally valid way allow the customer to offset or exercise a right to withhold.

- 1.4** The provider reserves the right to retain title and due rights regarding services until full payment of the owed remuneration, authorized retention due to defects being as per item 1.3. clause 2 is taken into consideration. Furthermore, the provider reserves the right to retain title until fulfilment of all their claims arising from the business relationship with the customer.

The provider is entitled to prohibit the customer from further use of services for the duration of the customer's default of payment. The provider can assert this right only for a reasonable period of time, usually a maximum of 6 months. This does not constitute withdrawal from the contract. Section 449 paragraph 2 German Civil Code remains unaffected.

If a customer or their buyers return services, receipt of these services does not constitute withdrawal by the provider unless they have expressly declared withdrawal. The same is true for seizure of goods subject to retention of title or rights to such goods on the provider's part.

The Customer may neither pledge nor assign as collateral items which are subject to retention of title or legal reservations. The customer is only authorized as a reseller to resell items in the ordinary course of business, under the condition that claims against the customer's buyers in connection with the resale have been validly assigned to the provider, and the customer transfers ownership to their buyers subject to payment. By concluding this contract, the customer assigns their future claims regarding such sales vis-à-vis their buyers as a security to the provider, who hereby accepts this assignment.

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If the value of the provider's collateral rights exceeds the value of the secured claims by more than 20%, the provider shall release a corresponding portion of the security rights at the customer's request.

- 1.5** In the event of a permissible transfer of usage rights pertaining to deliveries and services, the customer is obliged to impose the contractually agreed restrictions on the recipient.
- 1.6** If the customer fails to settle due claims wholly or partially by the contractual payment date, the provider can revoke agreed payment terms for all claims. Furthermore, the provider is entitled to render other services only against advance payment or security through performance guarantee of a credit institute or credit insurer authorized in the European Union. The advance payment is to cover the respective billing period or - in the case of one-time services - their remuneration.
- 1.7** If the customer is economically unable to fulfil their obligations vis-à-vis the provider, the provider may terminate existing exchange agreements with the customer through withdrawal, and continuing obligations through cancellation without notice, also in the event of an insolvency application by the customer. Section 321 German Civil Code and section 112 German Insolvency Law remain unaffected. The customer shall give the provider timely, written notification of any impending insolvency.
- 1.8** Fixed service deadlines must exclusively be agreed expressly in documented form. Agreement of a fixed service deadline is subject to the proviso that the provider receives services from their respective suppliers in a timely and contractually compliant manner.

## **2. Collaboration, obligations to cooperate, confidentiality**

- 2.1** The customer and provider shall each appoint a responsible contact person. Communication between the customer and provider is to take place via these contact persons, unless agreed otherwise. The contact persons shall promptly make all decisions related to contract execution. The decisions must be documented in a binding form.
- 2.2** The customer is obliged to support the provider as necessary, and create all the conditions necessary in their sphere of operations for proper execution of the contract. For this, they shall provide, in particular, the necessary information and enable remote access to the customer's system as far as possible. If remote access is not possible for security-related reasons or other reasons, relevant deadlines shall be extended appropriately; as concerns further effects, the contractual partners will agree on suitable provisions. The customer shall furthermore ensure that qualified staff are available for supporting the provider.

Insofar as the contract contains agreements that services can be provided at the customer's site, the customer shall provide adequate workstations and work equipment free of charge at the provider's request.

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- 2.3** Unless agreed otherwise, the customer shall provide for proper data backup and precautions against failure of data and components (e.g. hardware, software) in a manner appropriate to their nature and importance.
- 2.4** The customer shall immediately report defects in an understandable and detailed manner in writing, including all information useful for defect identification and analysis. To be described here, in particular, are the work steps which led to occurrence of the defect, as well as the manifestation and effects of the defect. The provider's relevant forms and procedures shall be used for this purpose, unless agreed otherwise.
- 2.5** On request, the customer shall appropriately assist the provider in reviewing and asserting claims against other participants relating to service provision. This applies especially to recourse claims by the provider against pre-suppliers.
- 2.6** The contractual partners are obliged to maintain confidentiality about trade secrets as well as other information designated as confidential (e.g. in records, documents, data inventories) which becomes known in the context of contract execution, and to neither utilize nor disclose such information outside the purpose of the contract, without the other contractual partner's consent.

The contractual partner receiving such information is obliged to take appropriate confidentiality measures applicable to trade secrets and information designated as confidential. Neither contractual partner is entitled to obtain trade secrets of the other contractual partner by observing, investigating, dismantling or testing the object covered by the contract. The same applies to other information or objects received during contract execution.

Disclosure of trade secrets and other information designated as confidential to persons not involved in signing, executing or completing the contract is permissible only with the other contractual partner's written consent in each case.

Unless otherwise agreed, the commitment to confidentiality regarding other information designated as confidential ends after a period of five years following announcement of the information but, if continuing obligations are involved, not before these end. Trade secrets are to be kept confidential for an unlimited period of time.

- 2.7** The contractual partners are aware that electronic and unencrypted communication (e.g. via e-mail) is laden with security risks. For this type of communication, they will therefore assert no claims based on a lack of encryption, unless encryption was previously agreed.

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### **3. Disruptions in service provision**

- 3.1** If a factor for which the provider is not responsible, including strikes and lockouts, affects adherence to a deadline ("disruption"), the deadline is to be postponed by the duration of the disruption, in addition to a reasonable restart phase if necessary. Each contractual partner is to immediately notify the other partner about the cause of any disruption occurring in their sphere, as well as length of the postponement.
- 3.2** If expenditure rises due to a disruption, the provider may request remuneration of the additional expenditure, unless the customer is not liable for the disruption and its cause lies outside the scope of said customer's responsibility.
- 3.3** If the customer can withdraw from the contract due to improper service rendition by the provider and/or demand damage compensation instead of service or affirms this, they are to declare in writing on the provider's request within a reasonable, set period whether they will assert these rights or whether they still desire a provision of the service. In the event of withdrawal, the customer will reimburse the provider with the value of the previously existent utilization options; the same applies to deterioration through proper use.  
  
If the provider is delayed in rendering services, the customer's compensation for damages and expenditure due to the delay is limited, for each completed week of delay, to 0.5% of the price for the part of the contractual service which cannot be utilized due to the delay. Liability for delays is limited to a maximum of 5% of the remuneration for all contractual services affected by the delay; in the case of continuing obligations, it is based on remuneration for the relevant services for the full calendar year. Applicable as a supplement with priority is a percentage of the remuneration agreed on contract conclusion. This does not apply to delays due to gross negligence or wilful intent on the provider's part.
- 3.4** If service provision is delayed, the customer has a right of withdrawal in the context of legal provisions only if the provider is responsible for the delay. If the customer rightfully raises a claim for compensation of damages or expenditure instead of service due to a delay, said customer is entitled to charge, for every full week of the delay, 1% of the price for the part of the contractual service which cannot be utilized due to the delay, but no more than 10% of this price; serving as a basis in case of continuing obligations is the remuneration for the affected services for the full calendar year. Applicable as a supplement with priority is a percentage of the remuneration agreed on contract conclusion.

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### **4. Material defects and reimbursement of expenditure**

- 4.1** The provider guarantees the contractually owed quality of services. Claims regarding material defects do not arise if the provider's services deviate just negligibly from the contractual quality.

Claims for defects also do not exist with excessive or improper use, natural wear and tear, or failure of components of the system environment. The same applies to non-reproducible or other software errors that are not verifiable by the customer. This also applies to damages due to specific external influences, which are not preconditions in accordance with the contract. Claims for defects also do not exist in the event of subsequent modification or repair by the customer or third parties, unless this does not impede the analysis and elimination of a material defect.

Item 6 applies as a supplement to claims for compensation of damages and expenditure.

- 4.2** The limitation period for claims based on material defects is one year from the statutory beginning of limitation. The statutory periods for recourse according to section 478 German Civil Code remain unaffected. The same applies insofar as longer periods are prescribed, pursuant to section 438 paragraph 1 item 2 or section 634a paragraph 1 item 2 German Civil Code, in case of intentional or grossly negligent breach of duty by the provider, fraudulent concealment of defects, harm to life, body or health, as well as claims based on the product liability act.

The provider's processing of a notice of a material defect from the customer only retards the limitation period insofar as the statutory prerequisites for this are present. The limitation period does not newly begin as a result.

Supplementary performance (new delivery or reworking) can only influence the limitation period for the defect which triggered supplementary performance.

- 4.3** Recourse claims for contracts regarding digital products pursuant to section 327u German Civil Code remain unaffected by clauses 4.1 and 4.2.

If a purchaser asserts a claim vis-à-vis the customer, and this may lead to a recourse claim, the customer will immediately inform the vendor about the asserted claim and the necessary and useful further information for assessing it. The customer will give the customer the opportunity to satisfy the claim asserted by the customer's purchaser, except if this is unreasonable for the customer. The customer and the provider will consult and coordinate with the aim of satisfying a justified claim of the customer's purchaser as cheaply and cost-effectively as possible.

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- 4.4** The provider can demand remuneration for their expenditure insofar as
- (a) they act on a report without there actually being a defect, unless the customer could not recognize with reasonable effort that no defect existed, or
  - (b) a reported fault is not reproducible or otherwise demonstrable as a defect by the customer, or
  - (c) additional expenditure is incurred due to improper fulfilment of the customer's obligations (also refer to Items 2.2, 2.3, 2.4 and 5.2).

## **5. Defects of title**

- 5.1** The provider is liable for infringement of third-party rights by said provider's service only insofar as the service is utilized unmodified in accordance with the contract and, in particular, in the contractually agreed or otherwise intended environment.

The provider is liable for infringements of third party rights only within the European Union and the European Economic Area, and at the location of service utilization as per the contract. Item 4.1, clause 1 applies accordingly.

- 5.2** If a third party asserts vis-à-vis the customer that a service from the provider violates their rights, the customer shall promptly notify the provider. The provider and, if applicable, their suppliers are authorized but not obliged to ward off the asserted claims, to the extent permitted, at their own expense.

The customer is not authorized to recognize third-party claims before giving the provider an adequate opportunity to avert the third-party rights in other ways.

- 5.3** If third-party rights are breached by one of the provider's services, the provider, at their own expense and discretion, shall

- (a) supply the customer with the right to use the service, or
- (b) organize the service such that it is free of legal breaches, or
- (c) take back the service and refund the remuneration paid by the customer (minus a reasonable reimbursement for use) if the provider cannot achieve any other remedy with reasonable effort.

The customer's interests are to be considered adequately here.

- 5.4** Claims of the customer regarding defects in title lapse according to Item 4.2. Item 6 applies additionally to the customer's claims for damage and expenditure compensation; Item 4.3 applies accordingly to the provider's additional expenditures.

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## **6. The provider's general liability**

**6.1** The provider is always liable to the customer

- (a)** for damage caused by the provider or their legal representatives or vicarious agents intentionally or through gross negligence,
- (b)** according to the product liability law and
- (c)** for damage which arises from harm to life, body or health, and for which the provider, their legal representatives or vicarious agents are responsible.

**6.2** The provider is not liable for slight negligence unless they have breached an essential contractual obligation whose fulfilment is a prerequisite for proper execution of the contract, or whose breach endangers attainment of the contractual goal and whose observance the customer must regularly rely on.

For material and pecuniary damages, this liability is limited to the damages typical and foreseeable for the contract. The same applies to loss of profit and savings which failed to materialize. Liability for other remote consequential damage is excluded.

For an individual instance of damage, liability is limited to the contract value; for ongoing remunerations, liability is limited to the amount of remuneration per contract year, but not less than € 50,000. Item 4.2 applies accordingly to the statute of limitations. On contract conclusion, the contractual partners can agree further liability in writing, usually in exchange for a separate remuneration. An individually agreed liability sum has priority. Liability as per item 6.1 is not influenced by this paragraph.

As a supplement with priority, the provider's liability due to slight negligence arising from the respective contract and its execution with regard to compensation of damage and expenditure - irrespective of the legal grounds - is on a whole limited to the percentage rate agreed in this contract with respect to the remuneration agreed on contract conclusion. Liability as per item 6.1 b) is not influenced by this paragraph.

**6.3** On the basis of a guarantee declaration, the provider is only liable for damage compensation if this was explicitly accepted in the guarantee. In the case of slight negligence, this liability is subject to the limitations set forth in item 6.2.

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- 6.4** If recovery of data or components (e.g. hardware, software) becomes necessary, the provider is liable only for the expenditure required for recovery given proper data backup and failure precautions by the customer. In case of slight negligence by the provider, this liability arises only if the customer implemented appropriate data backup and failure precautions for the type of data and components before the disruption. This does not apply if agreed as performance to be delivered by the provider.
- 6.5** Items 6.1 to 6.4 apply accordingly to claims for compensation of expenditure and other liability claims of the customer against the provider. Items 3.3 and 3.4 remain unaffected.

## **7. Data privacy**

The customer shall conclude agreements legally required for handling of personal data with the provider.

## **8. Miscellaneous**

- 8.1** The customer is responsible for complying with import and export regulations applicable to deliveries and services, in particular those associated with the United States. For cross-border deliveries and services, the customer shall cover customs, fees and other charges. The customer is responsible for handling legal and official procedures in connection with cross-border deliveries and services, unless expressly agreed otherwise.
- 8.2** German law shall apply. Application of the CISG is excluded.
- 8.3** The provider renders their services on the basis of their general business terms. The customer's general business terms do not apply, even if the provider has not expressly contradicted them.

Acceptance of services by the customer is regarded as recognition of the provider's general business terms, waiving the customer's general business terms.

Other conditions are binding only if the provider has recognized them in writing; in this case, the provider's general business terms apply as a supplement.

- 8.4** Amendments and supplements to this contract can only be agreed in writing. Insofar as the written form is agreed (e.g. for termination, withdrawals), the text form is not sufficient.
- 8.5** The provider's domicile is the place of jurisdiction vis-à-vis merchants, legal persons under public law or special funds under public law. The provider can also file suit against the customer at their domicile.

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