



# General Terms and Conditions of Contract

AV BITKOM

ConSense GmbH  
Kackertstraße 11  
D-52072 Aachen

Tel.: +49 (0)241 / 990 93 93 – 0  
Fax: +49 (0)241 / 990 93 93 - 99  
E-Mail: [info@consense-gmbh.de](mailto:info@consense-gmbh.de)

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## **1. Remuneration, payment, protection of rights, deadlines**

- 1.1** Unless otherwise agreed, remuneration shall be calculated on a time and materials basis at the generally applicable prices of the provider upon contract formation. Remuneration is strictly net prices, plus value-added tax accrued by statute.

The provider may bill monthly. If performances are compensated on a time and materials basis, the provider shall document the type and duration of the activities and submit this document with the invoice.

- 1.2** All invoices are payable strictly without deduction within 14 calendar days of receipt to the seller's account.
- 1.3** The customer may only offset or hold back payments for defects if the customer actually has rights to payment for material defects or defects of title. For other claims based on defects, the customer may hold back only the part of the payments that are proportionate to the defect. Section 4.1 applies accordingly. The customer has no right to withhold payment if its claim for defects is time-barred. Apart from that, the customer may only set off or exercise a right to withhold payment for undisputed or legally established claims.
- 1.4** The provider retains ownership and rights that are to be granted for the performances until full payment of the remuneration owed; allowances shall be made for legitimate defects pursuant to section 1.3 second sentence. In addition, the provider retains ownership until all claims arising from the business relationship with the customer have been satisfied.

The provider is entitled to prohibit the customer's further use of the performances for the duration of the customer's default in payment. The provider can assert this right only for a reasonable time, normally for no more than six months. This entails no rescission of the agreement. Section 449 (2) of the German Civil Code (Bürgerliches Gesetzbuch – BGB) remains unaffected.

If the customer or its buyer return the performances, the receipt of the performances shall not constitute a rescission by the provider unless the provider has expressly declared rescission. The same is true for the attachment of goods subject to retention of title or of rights thereto by the provider.

The customer may not pledge or assign as security articles which are subject to retention of title or reservation of rights. The customer is only permitted to resell articles as a reseller in the ordinary course of business if the customer has effectively assigned to the provider its claims against its buyers in connection with the resale and the customer transfers ownership to its buyer subject to payment. By entering into this contract, the customer assigns to the provider - who hereby accepts such assignment - its future claims against customer's buyers in connection with such sales.

To the extent the value of the provider's security interest exceeds the secured rights by more than 20%, the provider shall release a corresponding proportion of the security interest if requested by the customer.

- 1.5** In the case of a permissible assignment of rights to use goods and services, the customer is obligated to impose the contractually stipulated restrictions on the recipient.

- 1.6** Should the customer fail to liquidate a payable, in full or in part, by the contracted payment deadline, the provider may revoke the stipulated payment terms for all payables. Moreover, the provider is entitled to condition further performance on advance payment or on the giving of security through a performance bond of a financial institution or credit insurer authorized in the European Union. The advance payment must cover the respective billing period or, in the case of one-time payments, the amount due.
- 1.7** In the event that the customer is financially incapable of satisfying its obligations toward the provider, the provider may rescind existing exchange agreements with the customer and summarily terminate continuing obligations without prior notice, also if the customer files an insolvency petition. Section 321 BGB and § 112 of the German Insolvency Code (Insolvenzordnung – InsO) remain unaffected. The customer shall timely inform the provider in writing concerning an impending insolvency.
- 1.8** Fixed performance deadlines shall exclusively be agreed on expressly in documented form. The stipulation of a fixed performance deadline is subject to the requirement that the provider receive the performances from its respective sub-suppliers on time and as contracted.

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

- 2.1** The customer and provider shall each name a responsible contact person. Unless otherwise agreed, the customer and the provider shall communicate through these contact persons. The contact persons shall promptly press for all decisions associated with performance of the contract. The decisions must be documented in a binding manner.
- 2.2** The customer is obligated to support the provider as needed and to provide all requisites in the customer's sphere of operations that are required for the proper execution of the order. To this end, the customer shall, in particular, provide necessary information and, if possible, facilitate remote access to the customer's system. If for security or other reasons remote access is not possible, affected deadlines shall be extended commensurately; the contracting parties shall agree on a reasonable arrangement for further ramifications. Moreover, the customer shall make competent personnel available for the support of the provider.

If it is stipulated in the contract that performances can be rendered on-site at the customer, the customer shall provide adequate workstations and equipment without charge if desired by the provider.

- 2.3** The customer shall report defects in writing without delay in a comprehensible and detailed form, providing all information which is useful for recognizing and analyzing the defects. In particular, the work steps shall be specified which led to the appearance of the defect, the form in which it appeared and the consequences of the defect. Unless otherwise agreed, the provider's corresponding forms and procedures are to be used for this.
- 2.4** The contracting parties are obligated to maintain the confidentiality of business and trade secrets and other information labeled confidential of which they become aware in connection with contract performance. Such information may be disclosed to persons who are not involved in the formation, performance or execution of the contract only with the written consent of the other contracting party. Unless otherwise agreed, this obligation shall cease at the end of five years after the

particular information becomes known, but not before the end of continuing obligations.

The contracting parties shall also impose these obligations on their employees and any third parties who may be engaged.

- 2.5** The contracting parties are aware that electronic and unencrypted communication (such as via e-mail) is fraught with security risks. With this kind of communication, they shall therefore assert no claims based on the absence of encryption unless encryption was agreed to in advance.

### **3. Interrupted performance**

- 3.1** When a cause which is not attributable to the provider, including strike or lock-out, interferes with compliance with deadlines ("interruption"), deadlines shall be postponed by the duration of the interruption, if necessary including a reasonable recovery phase. A contracting party shall promptly inform the other party of the cause of an interruption that has occurred in its area and the duration of the postponement.
- 3.2** If expense increases due to an interruption, the provider may also demand payment of the additional expense unless the customer is not responsible for the interruption and its cause lies outside of its area of responsibility.
- 3.3** If due to the provider's improper performance the customer can demand rescission of the contract and/or damages in lieu of performance, or asserts such, the customer shall, if requested by the provider, declare in writing within a reasonably set time whether it asserts such rights or continues to desire that the performance be rendered. In the case of rescission, the customer must reimburse the provider the value of the previously existing possible uses; the same applies for deterioration through use as intended.

If the provider should delay in rendering performance, the customer's reimbursement for loss and expense due to the delay is limited to 0.5 % of the price for each full week of delay for the part of the contractual performance which cannot be used due to the delay. Liability for delay is limited to a maximum of 5% of the remuneration for all contractual performances affected by the delay; in the case of continuing obligations, it is related to the remuneration for each of the affected performances for the entire calendar year. In addition, a percentage of the contracted remuneration agreed to at the time of contract formation shall have priority. This shall not apply to the extent a delay is based on gross negligence or intent of the provider.

- 3.4** In the event of a delay in performance, the customer shall have a right of rescission within the scope of the statutory provisions only if the provider is responsible for the delay. If because of the delay the customer justifiably claims reimbursement for loss or expense in lieu of performance, the customer is entitled to demand 1% of the price for each full week of delay for the part of the contractual performance which cannot be used by reason of the delay, but a total of no more than 10% of this price; in the case of continuing obligations, it is related to the remuneration for each of the affected performances for the entire calendar year. In addition, a percentage of the contracted remuneration agreed to at the time of contract formation shall have priority.

## **4. Material defects and reimbursement for expense**

- 4.1** The provider warrants the contractually owed qualities of the performances. No claims for material defects exist for an insignificant deviation of the provider's performance from the qualities as contracted.

Nor shall claims for defects exist where there is excessive or improper use, natural wear, failure of components of the system environment, software errors which cannot be reproduced or otherwise demonstrated by the customer or in the case of damages which arise based on special outside influences which are not expected under the contract. This also applies where there is subsequent modification or repair by the customer or a third party unless such modification or repair does not hamper the analysis and removal of a material defect.

Section 6 applies supplementally to claims for material defects and reimbursement for expense.

- 4.2** The limitation period for claims for material defects is one year from the start of the statutory limitation period. The statutory periods for recourse under § 479 BGB remain unaffected. The same applies where the law prescribes longer periods pursuant to § 438 (1) no. 2 or § 634a (1) no. 2 BGB, in the case of a grossly negligent or intentional breach of duty by the provider, in the case of fraudulent concealment of a defect as well as in cases of injury to life, limb or health as well as for claims under the German Product Liability Act (Produkthaftungsgesetz).

The processing of a customer's report of a defect by the provider results only in suspending the running of the limitation period if the statutory requirements for this are present. A lapsed limitation period does not begin all over through this. A cure (replacement or repair) can exclusively influence the lapse of the limitation period of the defect triggering the cure.

- 4.3** The provider can demand compensation for its expense if
- a) It responds based on a report without the existence of a defect unless the customer, with reasonable effort, could not recognize that no defect was present; or
  - b) A reported interruption cannot be reproduced or otherwise demonstrated by the customer to be a defect; or
  - c) Additional expense is incurred due to improper fulfillment of the customer's duties (see also sections 2.2, 2.3 and 5.2).

## **5. Defects of title**

- 5.1** The provider is liable for infringements of third party rights through its performance only if the performance is rendered as contracted, without change, and particularly in the contractually stipulated or otherwise intended environment for use.

The provider is liable for infringements of third party rights only within the European Union and the European Economic Area as well as at the place of use of the performance in accordance with the contract. Section 4.1 first sentence applies accordingly.

- 5.2** If a third party asserts to the customer that a performance by the provider infringes its rights, the customer shall immediately notify the provider. The provider and its

sub-supplier, if any, are entitled, but not obligated, to fight off the asserted claims at their expense to the extent permissible.

The customer is not authorized to acknowledge third party claims before it has given the provider reasonable opportunity to fight the third party rights in another manner.

- 5.3** If the rights of a third party are infringed through a performance by the provider, the provider shall, at its option and own expense,
- a) Provide the customer the right to use the performance or
  - b) Structure the performance in a manner that does not infringe a right or
  - c) Withdraw the performance while refunding the remuneration the customer has paid for it (less reasonable compensation for use) if the provider is unable to attain any other remedy with reasonable effort.

The interests of the customer shall be reasonably considered in the course of this.

- 5.4** Claims by the customer for defects of title lapse in accordance with section 4.2. Section 6 applies in supplement for claims for material defects and reimbursement of expenses; for additional expense of the provider, section 4.3 applies accordingly.

## **6. General liability of the provider**

- 6.1** The provider is always liable to the customer
- a) For damages occasioned by it or its legal representatives intentionally or through gross negligence,
  - b) Under the German Product Liability Act and
  - c) For damages arising from injury to life, limb or health for which the provider, its legal representatives or agents are responsible.
- 6.2** The provider shall not be liable for slight negligence unless it has breached a material contractual obligation, the fulfillment of which is an absolute prerequisite to the proper performance of the contract or whose breach jeopardizes the realization of the contract purpose and the adherence to which the customer may regularly rely.

In the case of property damage and financial loss, such liability is limited to foreseeable loss which is typical of contract. This also applies to lost profit and missed savings. Liability for miscellaneous remote damages is excluded.

Liability for an individual event of loss is limited to the value of the contract and, in the case of ongoing remuneration, to the remuneration per contract year, but not less than € 50,000. Section 4.2 applies accordingly to limitation of actions. At contract formation, the contracting parties may agree in writing to further liability, usually in exchange for special remuneration. An individually agreed amount of liability shall take precedence. Liability under section 6.1 remains unaffected by this paragraph.

In supplement hereto and having priority, the provider's liability under the particular agreement and its performance for the reimbursement of losses and expenses arising from slight negligence - irrespective of the legal reason - is limited in total to the contractually stipulated percentage of the remuneration that was agreed to upon contract formation. Liability under section 6.1 b) remains unaffected by this paragraph.

- 6.3** The provider is liable under a warranty only for damages if this was expressly assumed in the warranty. In the case of slight negligence, this liability is subject to the limitations under section 6.2.
- 6.4** In the case of loss of data, the provider is liable only for the expense which is required to restore data that has been properly backed up by the customer. In the case of slight negligence of the provider, such liability arises only if, before the action which resulted in the loss of data, the customer has performed a proper backup in accordance with the duty of care for the type of data.
- 6.5** Sections 6.1 through 6.4 apply accordingly to claims for reimbursement of expenses and other liability claims by the customer against the provider. Sections 3.3 and 3.4 remain unaffected.

## **7. Data privacy**

The customer shall enter into agreements required for possible access to personal data with the provider and thereby also observe the special requirements for contract data processing (§ 11 of the German Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG)).

## **8. Miscellaneous**

- 8.1** The customer shall independently follow import and export regulations to be applied for goods or services, particularly those of the USA. In the case of transnational goods or services, the customer is responsible for customs duties, fees and other charges incurred. Unless it is otherwise expressly agreed, the customer shall independently handle legal or regulatory proceedings associated with transnational goods or services.
- 8.2** German law applies. Application of the United Nations Convention on Contracts for the international Sale of Goods is excluded.
- 8.3** The provider shall render its performances based on its general terms and conditions. General terms and conditions of the customer do not apply, even if the provider has not expressly objected to them.

Acceptance of the performances by the customer is deemed to be acknowledgment of the provider's general terms and conditions while waiving the general terms and conditions of the customer.

Other terms and conditions are only binding if the provider has acknowledged them in writing; in such case, the general terms and conditions of the provider apply in supplement.
- 8.4** Amendments and additions to this agreement shall only be agreed to in writing. If written form is stipulated (such as for notices of termination and rescission), "text form" (as defined in § 126b BGB) is insufficient.



- 8.5** With respect to a merchant, a corporate body under public law or a special fund under public law, the judicial venue is at the locale of the registered office of the provider. The provider may also bring legal action against the customer at its registered office.