



General Terms and Conditions of Contract for the Creation of Software

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1. Subject of the agreement

- 1.1** The provider shall create software for the customer pursuant to the statement of work underlying contract formation (see section 2.2).
- 1.2** The copy of the software delivered to the customer by the provider contains only object code.
- 1.3** The software is delivered with operating instructions (user documentation or online help). Unless otherwise agreed, the operating instructions are in the language of the software's user interface.

The delivery or preparation of additional documentation needs a separate written agreement, particularly on the content and scope of the documentation.

- 1.4** The provider shall create the software along with the operating instructions (together: "subjects of the agreement") in accordance with the principles of proper professional practice.
- 1.5** Analytic, planning, consulting and training services are not part of this agreement and not owed by the provider.

2. Collaboration of the parties

- 2.1** The customer shall advise the provider fully and in detail concerning its technical and functional requirements for the software and deliver to the provider in a timely manner all documents, information and data needed to create the software. This also entails the description of practice-oriented and appropriate test cases for validating the qualities (section 7.1).
- 2.2** The statement of work conclusively recites the qualities of the software that are owed. Changes to the statement of work are made only pursuant to section 3. The provider will also provide analytic, planning and consulting services in connection with the statement of work only on the basis of a separate contract for separate remuneration (see also section 1.5).
- 2.3** The provider shall bring in the project manager named by the customer as a contact person (section 2.1 of AV BITKOM) to the extent that performance of the contract requires this. The decisions of the contact persons are to be committed to writing.
- 2.4** The customer has no right to have the service performed at the customer's premises.

3. Procedure for changes in performance

Both parties may suggest changes to the statement of work (section 2.2) and its execution. The following procedure is agreed to for this:

- 3.1** The provider will look over a proposed modification by the customer and let the customer know whether an extensive review of such proposed modification is required.
- 3.2** If an extensive review of the proposed modification is required, the provider will advise the customer within a reasonable time of the estimated period of time needed for this and the remuneration. The customer shall award or reject the

review order within a reasonable time.

- 3.3** If an extensive review of the proposed modification is not required or the ordered review has been completed, the provider shall provide the customer either
- a) a written proposal for performing the modifications (modification proposal) - the modification proposal shall in particular contain the modifications to the statement of work and their effects on the period of performance, the scheduled deadlines and the remuneration - or
 - b) disclose that the provider is unable to implement the proposed modification within the framework of the agreed services.
- 3.4** The customer shall either reject a modification proposal within the acceptance period specified in the proposal (binding period) or accept it in writing or in another form stipulated between the parties. The customer shall promptly notify the provider of any rejection.
- 3.5** The provider and the customer can agree that performances impacted by a proposed modification are to be suspended until the end of the review or - if a modification proposal is submitted - up to the end of the binding period.
- 3.6** Until the modification proposal is accepted, work shall continue based on the existing contractual arrangements. The periods for performance shall be extended by the number of calendar days when work was suspended in connection with the proposed modification or its review. The provider may demand reasonable remuneration for the period of the suspension (section 3.5) unless the provider has employed or willfully refrained from employing its suspension-affected employees elsewhere.
- 3.7** Unless otherwise agreed, if requested by the provider, the modification procedure shall be documented in writing or in text form on a form of the provider. Every modification to the statement of work must be agreed to in writing or in another form stipulated between the parties.
- 3.8** Sections 3.2 through 3.7 apply accordingly to proposed modifications of the provider.
- 3.9** Proposed modifications shall be sent to the party's contact person (section 2.3).

4. Rights of use and protection against unauthorized use

- 4.1** With full payment of the remuneration owed, the provider shall grant the customer the nonexclusive right to permanently use the subjects of the agreement in its business for the contractually provided purpose, unless otherwise agreed. Rights of use may be assigned to third parties only upon full surrender of the customer's rights. The customer is obligated to impose upon the third party the duties and usage restrictions which pertain to him. This expressly applies to the duties in section 5.8. If requested by the provider, the customer shall confirm in writing that its own use has been discontinued.
- 4.2** Apart from that, all rights remain with the provider.
- 4.3** The provider is entitled to undertake appropriate technical measures to protect against non-contracted use. The use of the software on an alternate or successor configuration may not be materially compromised through this.
- 4.4** The provider may revoke usage rights of the customer if the customer materially

violates restrictions of usage or other rules to protect against unauthorized use (see also section 5.8). Before that, the provider shall set a deadline for the customer to undertake remedial action. The provider may revoke the rights without setting a deadline in the event of recurring events and special circumstances which, in balancing the interests of both parties, warrant immediate revocation. After the revocation, the customer shall confirm to the provider in writing that the usage has been suspended. The provider will restore the usage rights to the customer after the customer has represented and assured in writing that there are no infringements of any kind against the usage rights and that previous infringements and their consequences have been resolved.

5. Duties of the customer

- 5.1** The customer shall ensure that competent personnel are available to support the provider throughout the project and following delivery of the qualities review (section 7.1) and the deployment of the software.
- 5.2** At the provider's request, the customer shall provide appropriate test cases and data in machine readable form for validating the qualities (cf. section 2.1). If the customer fails to deliver such test cases and data, the provider may itself select and prepare appropriate test cases for additional remuneration.
- 5.3** After being informed of its availability, the customer is obligated to download software that has been provided for this
- 5.4** The customer shall report deficiencies, particularly in accordance with section 2.3 of AV BITKOM. Unless otherwise agreed, the provider's corresponding forms and procedures are to be used for this.
- 5.5** The customer shall support the provider to the extent required for contract performance and for the removal of deficiencies pursuant to section 2.2 of AV BITKOM and make other analytic material available.
- 5.6** The customer shall promptly inform the provider concerning changes in the conditions of use following delivery.
- 5.7** Unless otherwise agreed, the customer shall, in addition, store at its own premises all documents, information and data delivered to the provider in a manner that permits such to be reconstructed with the aid of data storage media in case of damage or loss.
- 5.8** The customer may not do anything that might encourage unauthorized use. In particular, the customer may not attempt to decompile the software unless the customer is authorized to do so. The customer shall immediately notify the provider when the customer is aware that unauthorized access is threatened or has occurred in its area.

6. Delivery and passing of risk

- 6.1** Unless otherwise agreed, the provider may also deliver the subjects of the agreement to the customer by electronic transmission or by making them available for download. If the subjects of the agreement are made available for download, the provider shall notify the customer of the availability.
- 6.2** If the subjects of the agreement are transmitted electronically, the risk of accidental

destruction passes to the customer upon receipt at the telecommunications service provider engaged by the provider to carry the transmission.

- 6.3** If the subjects of the agreement are made available for download, the risk of accidental destruction passes to the customer upon availability and notification of the customer.

7. Customer's qualities review and claims for defects

- a. The customer shall promptly - ordinarily within fourteen calendar days - check all delivered subjects of the agreement, particularly software or executable parts of the software for which partial delivery has been agreed to, for defect-free operation, especially the contracted qualities (qualities review). To this end, the customer shall employ practice-oriented and appropriate test cases and data for the software (cf. section 2.1). The provider may coordinate the test procedures with the customer and also supervise and support the qualities review on site.
- b. The customer shall duly report any deficiencies which appear during or after the qualities review, without delay and not later than seven calendar days after becoming aware of such deficiencies (section 5.4).
- c. The commercial obligation to inspect and report defects applies in supplement hereto (§ 377 of the German Commercial Code (Handelsgesetzbuch – HGB)).
- d. The provider warrants that the subjects of the agreement shall conform to the qualities as contracted during use as contracted. Section 4 of AV BITKOM expressly applies to material defects. Section 5 of AV BITKOM expressly applies to defects of title.
- e. The customer shall have claims for defects only if reported defects are reproducible or demonstrable in another way. Sections 5.4, 7.2 and 7.3 expressly apply to the reporting of defects.
- f. If the customer is entitled to claims for defects, the customer initially only has the right to a cure within a reasonable period. Cure involves either repair or the creation of a new subject of the agreement, at the option of the provider. The interests of the customer shall be reasonably considered in making the election.
- g. If the cure fails or cannot be effected for other reasons, the customer may reduce the remuneration in accordance with statutory requirements, rescind the contract and/or demand reimbursement of losses or expenses within the framework of section 6 of AV BITKOM.
- h. If cure is delayed, section 3.4 of AV BITKOM applies to the provider's claims for reimbursement of expense and losses. Section 6 of AV BITKOM expressly applies to reimbursement of losses or expenses.
- i. The customer shall exercise an election it has with regard to such claims for defects within a reasonable period, ordinarily within fourteen calendar days following the customer's opportunity to learn of the election.

8. Application of AV BITKOM

The BITKOM General Terms and Conditions of Contract (AV BITKOM) apply in addition.