



General Terms and Conditions of Contract for Contracts for Work

WV 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

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1. Subject of the agreement, statement of work

1.1 The provider shall create the work in accordance with the terms and conditions stipulated in the contract and herein for the contractually stipulated remuneration.

1.2 The provider is responsible for an outcome only if

- a) the applicable criteria for this were concretely and conclusively defined with regard to scope and effect in the statement of work upon contract formation and were made the subject of the agreement (agreed performance criteria); and
- b) the customer properly satisfies its duties to cooperate in a timely manner, unless they have no effects on performance of the service.

1.3 The statement of work is based on the customer's technical and functional requirements that are communicated by the customer. The statement of work conclusively recites the agreed performance criteria (section 1.2 a) and any test criteria that are to be applied to them. Changes to the statement of work are made only pursuant to section 4. The provider will perform any analytic, planning and consulting services for the statement of work only on the basis of a separate agreement.

Unless already stipulated in the statement of work, the parties shall, on the basis of the agreed performance criteria, agree on the means of testing, such as test cases (section 6.1 and 6.6 e) that are to be used for their review, by a date stipulated in the contract, or at the latest within two weeks after the contract signing.

If the means of testing have not been agreed on within two weeks after the date set, the provider may define binding, suitable means of testing. The interests of the customer shall be reasonably considered in the course of this.

1.4 If the provider is not required to produce an outcome under a contract for work, DL BITKOM (terms and conditions of contract for services) applies unless otherwise agreed.

2. Collaboration of the parties

2.1 The contract persons (section 2.1 of AV BITKOM) shall promptly press for decisions associated with performance of the contract and be available for the necessary information.

The decisions of the contact persons are to be documented.

2.2 Unless otherwise agreed, the place of performance for the service is the registered office of the provider.

3. Duties to cooperate

3.1 The customer shall ensure that the provider has available - in full, correctly, in a timely manner and without charge - the documents, information and data that are needed to perform the service, unless the provider is responsible for supplying such materials. The provider may assume the completeness and correctness of such documents, information and data unless the provider recognizes or should recognize that such is incomplete or incorrect.

3.2 The customer shall deliver the means of testing defined in section 1.3 in a timely manner and properly. If the customer is delayed in making the delivery, the provider is entitled to create or procure suitable means of testing at the customer's expense.

3.3 The customer shall report deficiencies, particularly in accordance with section 2.3 of AV BITKOM.

4. Procedure for changes in performance

Both parties may suggest changes to the statement of work (section 1.3) and its execution. The following procedure is agreed to for this:

4.1 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.

4.2 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.

4.3 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, the means of testing and the remuneration

b) or disclose that the provider is unable to implement the proposed modification within the framework of the agreed services.

4.4 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 agreed form. The customer shall promptly notify the provider of any rejection.

4.5 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.

4.6 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 4.5) unless the provider has employed or willfully refrained from employing its suspension - affected employees elsewhere.

4.7 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. Each change in the contractual arrangement, particularly the statement of work, must be agreed to in writing.

4.8 Sections 4.2 through 4.7 apply accordingly to proposed modifications of the provider.

4.9 Proposed modifications shall be sent to the party's contact person (section 2.1).

5. Rights of use

5.1 The provider grants the customer the non - exclusive right to permanently use, for its own internal purposes within the scope of the contractually provided purpose, the results of the performance which the provider has rendered in the context of the agreement and delivered to the customer. Rights of use may be assigned to third parties only upon full surrender of the customer's rights. The customer is obligated to impose on the third party the duties and usage restrictions which pertain to him. This expressly applies to the duties in section 5.4. If requested by the provider, the customer shall confirm in writing that its own use has been discontinued.

5.2 Apart from that, all rights remain with the provider.

5.3 The customer shall immediately notify the provider when the customer is aware that an unauthorized access or use is threatened or has occurred in its area. The provider is entitled to undertake appropriate technical measures to protect against non - contracted use. The contracted use of the services may not be materially compromised through this.

5.4 The customer may not do anything that might encourage unauthorized use. In particular, the customer may not attempt to decompile the programs unless it is authorized pursuant to § 69d of the German Copyright Act (Urheberrechtsgesetz–UrhG) to do so for interfaces with software that is not supplied by the provider. Before decompilation, the customer shall first request the required information from the provider.

5.5 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. Before that, the provider shall set a deadline for the customer to undertake remedial action. The provider may also revoke the rights without setting a deadline in the event of recurring events or 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 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.

6. Acceptance

6.1 The customer shall declare acceptance within fourteen calendar days after receipt of the provider's written request for acceptance, unless a different deadline has been agreed to. During this examination period, the customer can make sure that the work has been produced as contracted, if needed with the aid of the means of testing (section 1.3).

6.2 Unless otherwise agreed, a defect that is complained of shall be assigned to one of the following categories:

a) Category 1

The work contains a defect that makes it impossible to use or that allows use only with serious restrictions.

b) Category 2

The work contains a defect that restricts use without the existence of a Category 1 defect.

c) Category 3

The work contains a defect that only slightly restricts use.

- 6.3** In the case of a Category 1 defect, the customer may refuse acceptance. This also applies when multiple Category 2 defects together give rise to Category 1 consequences. The provider shall cure properly reported defects (section 3.3) with Category 1 consequences within a reasonable time in such a way that no Category 1 consequences continue to exist. While the examination cannot be properly carried on due to such a defect, its consequences or cure, the examination period for the work that is affected by this shall be extended for a reasonable time. Claims on account of defects after acceptance has been declared remain unaffected.
- 6.4** Already completed partial acceptances are unaffected by subsequent acceptance tests for other performances. The same applies to already completed examinations, except when they are affected by a defect or its cure.
- 6.5** The performance can be accepted if no consequences of Category 1 defects exist
- 6.6** The work is deemed accepted even without an express declaration and without a request for acceptance from the provider
- a) when the customer uses the work for other than testing purposes (section 1.3), or
 - b) upon payment, unless the customer has justifiably refused acceptance, or
 - c) if, within the examination period in section 6.1, the customer fails to complain of any defects which prevent acceptance, or
 - d) if, within a reasonable period set for it by the provider, the customer fails to complain of any defects which prevent acceptance, and the provider has referred to this consequence when setting the deadline, or
 - e) if, in employing the means of testing (sections 1.3, 3.2), the tests can be performed without the surfacing of defects which prevent acceptance.
- 6.7** Unless otherwise agreed, definable partial performances are also accepted individually in accordance with these rules.

7. The customer's claims for defects

- 7.1** The customer has claims for defects only if reported defects are reproducible or demonstrable in another way. This also applies to defects for which rights are reserved during acceptance. Section 3.3 expressly applies to the reporting of defects.
- 7.2** 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 correction of the defect or production of a new work, at the option of the provider.
- 7.3** 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. The customer may undertake to effect the cure at the provider's expense only if, notwithstanding the lapse of a reasonable deadline for cure, a defect has not been resolved and the cause of this resides with the provider.

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 applies to reimbursement of losses or expenses.

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

- 7.4** Section 4 of AV BITKOM supplementally applies to material defects; section 5 of AV BITKOM supplementally applies to defects of title. Section 641 (3) of the German Civil Code (Bürgerliches Gesetzbuch – BGB) remains unaffected.

8. Early termination

- 8.1** If a minimum term has been stipulated for the contract, a regular termination without cause is barred before the expiration of the minimum term.
- 8.2** If no minimum term has been stipulated and the customer gives notice of termination before acceptance, the provider is entitled to demand the agreed remuneration; however, it must allow a deduction for the expenses it saves as a result of the cancellation of the contract or for what it earns by using its workforce elsewhere or willfully refrains from earning. It is presumed that the provider is entitled to ten percent of the agreed remuneration which is allotted to the part of the work that has not yet been produced.

9. Application of AV BITKOM

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