

Convenience translation made by Utimaco (in case of doubt the German version shall take precedence)



The German Association for Information Technology, Telecommunications and New Media [Bundesverband Informationswirtschaft, Telekommunikation und Neue Medien e.V.] - BITKOM - recommends on a non-binding basis that its members use these General Terms and Conditions for transactions that do not involve consumers. It is left to the addressees' discretion to follow this recommendation or to use other General Terms and Conditions.

BITKOM Contractual Conditions for Works Contracts - WV BITKOM -

1. Subject matter and description of performance

1.1 The provider shall render the work performance (*Werkleistung*) solely subject to the conditions in the contract and those agreed below in return for the contractually agreed remuneration.

1.2 The responsibility for the outcome (*Erfolgsverantwortung*) shall be borne by the provider only in so far as

- a) the material criteria thereof were concretely and definitively defined in the description of performance (*Leistungsbeschreibung*) with respect to scope and effect and also made the subject matter of the agreement (agreed performance criteria (*vereinbarte Leistungskriterien*)) when the agreement was concluded and
- b) the customer fulfilled its duties to cooperate properly and in good time.

If any of the conditions at a) or b) has not been fulfilled, the provider has no obligation to provide a successful outcome. This shall not apply in so far as late or non-complaint participation (Clause 1.2. b) has no effects on the rendering of the performance.

1.3 The description of performance shall be based on the customer's technical and functional requirements as notified by the customer. The description of performance shall definitively define in particular the agreed performance criteria (Clause 1.2 a) and the test criteria to be applied. Changes to the description of performance shall be effected only subject to Clause 4. The provider shall render any analysis, planning and consulting services in conjunction with the description of performance only on the basis of a separate agreement.

In so far as not yet agreed in the description of performance, the parties shall use the agreed performance criteria to agree the test items (Clause 1.2 a) such as test cases (see Clause 6.6 e) to be used for testing the same in good time before the agreed start of the performance, in general within two weeks after signing of the agreement at the latest.

In so far as the test items have not been agreed in good time, the provider itself can bindingly define realistic and suitable test items. The interests of the customer shall be duly taken into consideration when the choice is made.

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1.4 In so far as the provider does not owe a successful outcome under a works contract, DL BITKOM (Contractual Conditions for Services) shall apply unless otherwise agreed.

2. Co-operation between contractual partners

2.1 The contact partners (Clause 2.1 BITKOM General Terms and Conditions (AV BITKOM)) shall promptly (*unverzüglich*) bring about decisions relating to the execution of the contract and be available to provide any necessary information.

The contact partners' decisions shall be documented.

2.2 The place for rendering the performance shall be the provider's registered offices, unless otherwise agreed.

3. Duties to cooperate

3.1 The customer shall ensure that the provider is furnished with all the necessary documents, information, and data for rendering the performance fully, correctly, in good time and free of charge, in so far as the provider does not have to provide the same. The provider shall be entitled to rely on these documents, information, and data being complete and correct, unless it realizes or should have realized that they are incomplete or incorrect.

3.2 The customer shall furnish the test items defined at Clause 1.3 duly and in good time. If the customer is in default (*Verzug*) with the handover, e.g. following a reminder (*Mahnung*) to do so, the provider shall be entitled to produce or procure suitable test items at the customer's expense.

3.3 The customer shall report faults (*Mängel*) in particular as per Clause 2.3 BITKOM General Terms and Conditions (AV BITKOM). Unless otherwise agreed, the provider's pertinent forms and procedures shall be used.

4. Change management procedure

Either contractual partner can suggest changes to the description of performance (see Clause 1.3) and the rendering of the performance. The following procedure shall be adopted:

4.1 The provider shall consider any suggestion for changes submitted by the customer and state whether a comprehensive analysis of this suggestion for changes is required or not.

4.2 If a comprehensive analysis of the suggestion for changes is required, the provider shall inform the customer within a reasonable period of time about how long this is expected to take and the remuneration owed. The customer shall place or cancel the analysis order within a reasonable period of time.

4.3 If a comprehensive analysis of the suggestion for changes is not required or the order for analysis is placed, the provider shall either

a) inform the customer that the suggestion for changes is not possible for the provider within the agreed services or

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- b) submit to the customer a written proposal to carry out the changes (change proposal - *Änderungsangebot*). The change proposal shall contain in particular the changes to the description of performance and their impact on the performance period, the planned deadlines, the test items, and the remuneration.
- 4.4 The customer shall either reject a change proposal or accept it in writing or in the due form agreed within the acceptance period stated therein (validity period - *Bindefrist*).
- 4.5 The provider and customer can agree that services affected by a suggestion for changes shall be suspended until completion of the analysis or - in so far as a change proposal has been submitted - until the end of the validity period.
- 4.6 Until the change proposal has been accepted, the work shall be continued on the basis of the previous contractual agreements. The performance periods shall be extended by the number of calendar days work was suspended in conjunction with the suggestion for changes or its analysis. The provider can request a reasonable remuneration for the duration of the interruption, unless the provider has otherwise deployed the staff affected by the interruption or maliciously failed to do so.
- 4.7 Upon request of the provider, the change management procedure shall be documented in writing or in text form on a printed form of the provider, unless otherwise agreed. Any change in the description of performance shall be agreed in writing or in another form as agreed by the contractual partners.
- 4.8 Clauses 4.2 to 4.7 shall apply accordingly for suggestions for changes proposed by the provider.
- 4.9 Suggestions for changes shall be submitted to the contractual partner's project manager (Clause 2.1).
- 5. Rights of use**
- 5.1 The provider shall grant the customer the non-exclusive and generally non-transferable right to use the results of the work services (*Leistungsergebnis*) it has rendered and provided to the customer under the contract for its own internal purposes within the contractually envisaged purpose for an unlimited period of time, unless otherwise agreed. The customer can transfer the granted right of use of the performances handed over by the provider to a third party only with complete surrender of its own rights.
- 5.2 Otherwise all rights shall remain with the provider.
- 5.3 The provider shall be entitled to take suitable technical actions to protect against contractually noncompliant use. The contractually agreed use of the work services may not be materially impaired as a result.
- 5.4 The provider can revoke the customer's right of use if the customer is in material breach of restrictions of use or other provisions for protection against unauthorized use. The provider shall first set the customer a deadline to rectify the situation (*Nachfrist zur Abhilfe*).

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In the event of repetition or in particular circumstances that with due regard to the interests of both parties justify immediate revocation, the provider shall be entitled to revocation without the setting of a deadline. The customer shall confirm to the provider in writing that it has ceased the non-compliant use.

6. Acceptance (*Abnahme*)

6.1 The customer shall carry out the acceptance (*Abnahme erklären*) within 14 calendar days from receipt of the written acceptance request from the provider, in so far as no other period of time has been agreed. During this acceptance period the customer can determine, using the test items (Clause 1.3) if and where appropriate, whether the work performance is as contractually agreed.

6.2 Unless otherwise agreed, a notified fault shall be assigned to one of the following categories:

- a) Category 1
The work performance has a fault rendering usability impossible or only with major limitations,
- b) Category 2
The work performance has a fault restricting usability without being a Category 1 fault.
- c) Category 3
The work performance has a fault without materially restricting usability.

6.3 In the case of a Category 1 fault the customer can refuse acceptance (*Verweigerung der Abnahmeerklärung*). This shall also apply if several Category 2 faults together result in the same effect as Category 1 (Clause 6.2a). The provider shall rectify properly reported (Clause 3.3) faults with Category 1 effects within a reasonable period of time such that there are no longer any Category 1 effects. In so far as inspections could not be properly continued owing to such a fault, its effects or rectification, the inspection period shall be extended appropriately for the affected work performance.

6.4 Later acceptance inspections for other services shall be without effect on already declared sub-acceptances (*Teilabnahmen*). The same shall apply for already completed inspections, unless they are affected by a fault or its rectification.

6.5 If and when there are no Category 1 fault effects, the performance shall be ready for acceptance. The customer shall then state its acceptance (see Clause 7.1) promptly (*unverzüglich*) after completion of any tests, at the latest however after the end of the test period (see Clause 6.1).

6.6 The work performance shall be deemed accepted - even without express declaration and without acceptance request by the provider -

- a) if the customer makes use of the work performance for purposes other than testing (Clause 1.3), or
- b) upon payment, unless the customer has legitimately refused acceptance, or

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- c) if the customer does not submit any complaints that prevent acceptance within the acceptance period as per Clause 6.1, or
- d) if the customer does not submit any complaints that prevent acceptance within a reasonable period of time set by the provider and the provider has drawn attention to this consequence when stipulating the deadline, or
- e) where the test items (Clause 1.3, 3.2) are used, if the tests can be carried out without faults that prevent acceptance.

6.7 Unless otherwise agreed, definable sub-performances shall be accepted separately and individually pursuant to these provisions.

7. Customer's warranty rights (*Mängelansprüche des Kunden*)

7.1 The customer shall have warranty claims only if reported faults are reproducible or otherwise demonstrable. This shall also apply for faults where certain rights are reserved during acceptance. The reporting of faults is governed in particular by Clause 3.3.

7.2 If the customer is entitled to warranty claims, it shall initially have only the right to subsequent performance (*Nacherfüllung*) within a reasonable period of time. The subsequent performance includes either repair or provision of a replacement at the provider's discretion.

7.3 If the subsequent performance fails or cannot be carried out due to other reasons, subject to the statutory preconditions the customer can reduce the remuneration, rescind and/or - under Clause 6 BITKOM General Terms and Conditions (AV BITKOM)- demand damages or compensation of expenses. The customer shall be entitled to cost-incurring self-performance (*Selbstvornahme*) only if a fault has not been rectified after expiration of a reasonable period of time allowed for subsequent performance and the cause therefore lies in the sphere of the provider. If the subsequent performance is delayed, the damages or compensation of expenses owed by the provider shall be governed by Clause 3.4 BITKOM General Terms and Conditions (AV BITKOM). Damages or compensation of expenses shall be governed in particular by Clause 6 BITKOM General Terms and Conditions (AV BITKOM).

The customer can exercise any choice it has with respect to warranty claims within a reasonable period of time, as a rule within 14 calendar days.

7.4 Material faults (*Sachmängel*) shall also be governed by Clause 4 BITKOM General Terms and Conditions (AV BITKOM), legal faults (*Rechtsmängel*) shall also be governed by Clause 5 BITKOM General Terms and Conditions (AV BITKOM).

8. Validity of BITKOM General Terms and Conditions (AV BITKOM)

In addition, the BITKOM General Terms and Conditions (AV BITKOM) shall also apply.

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The contractual terms and conditions are based on non-binding terms recommended by BITKOM e.V. and approved by the Federal Cartel Office.

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