

Table of contents

§ 1. Scope of application	2
§ 2. Principles of service provision	2
§ 3. Software customization and creation of individual software	2
§ 4. Change request procedures and modifications	3
§ 5. Inspection and testing	3
§ 6. Remuneration and payment	4
§ 7. Term and cancellation	5
§ 8. Reservation of title	5
§ 9. Participation of the client	6
§ 10. Warranty	6
§ 11. Compensation and reimbursement of expenses	6
§ 12. Intellectual property and infringement of third party rights	7
§ 13. Statutory limitations	8
§ 14. Force majeure	8
§ 15. Confidentiality and safekeeping	9
§ 16. Privacy Policy	9
§ 17. Final clauses	9

§ 1. Scope of application

- (1) The following General Terms and Conditions (GTC) apply to all business relationships between itprocess GmbH (hereinafter referred to as "ITP") with its clients. These GTC shall only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- (2) ITP provides consulting services for its clients. The detailed description of the services to be provided is set out in the respective individual contracts, the annexes thereto and any service descriptions (hereinafter "Services") of ITP.
- (3) If third-party software is provided, the terms of use, warranty and liability provisions of the respective manufacturer shall take precedence insofar as ITP refers to these provisions.
- (4) These GTC shall apply exclusively; any other GTC that conflict with or deviate from these GTC or statutory provisions shall not be recognized by ITP unless ITP has expressly agreed to their validity in writing. This shall also apply if ITP has not expressly objected to them or has performed services without reservation.

§ 2. Principles of service provision

- (1) The client shall specify the task in the form of individual orders. The planning of the task fulfillment is determined by ITP. ITP may refuse to accept an assignment if it deems it impracticable or impossible to fulfill the requirements or if sufficient capacity is not available.
- (2) The persons deployed by ITP shall not enter into any employment relationship with the client and shall not be subject to the client's authority to issue instructions. This applies in particular if persons employed by ITP provide the services on the client's premises. ITP reserves the right to replace an employee with another employee with the necessary qualifications at any time. ITP may decide how many and which employees - including freelancers and subcontractors at its own discretion - are deployed or which services are outsourced to third parties.
- (3) The contact person for the client is always the project manager or the management on the ITP side. For its part, the client shall appoint a responsible contact person and a deputy who shall coordinate the client's involvement and make the necessary decisions or be able to bring them about immediately.
- (4) Deadlines and fulfillment times are not fixed deadlines unless they are expressly conceded as such in writing by ITP.
- (5) Insofar as the client sets deadlines or grace periods for fulfillment or subsequent performance or elimination of a circumstance, these deadlines must be reasonable.
- (6) If the fruitless expiry of a deadline or grace period is to result in the release from the contractual obligation or a reduction in remuneration, this must be expressly threatened by the client when setting the deadline. The aforementioned declarations must be made in writing to be effective.

§ 3. Software customization and creation of individual software

- (1) The client shall define the task (e.g. in the form of a specification sheet), whereby the solution and the detailed content and technical implementation shall be developed jointly by the contracting parties in a planning/conceptualization phase. This phase shall end with a detailed concept/specification, the release of which ITP may request from the client prior to its implementation.
- (2) The client shall bear the risk that the task formulated by it, or the services specifically commissioned correspond to its actual ideas and requirements.

- (3) The subsequent implementation/realization of the services shall end with the completion of the software on a test system of the client and the execution of the test measures prior to the commissioning in the operational business (Go Live) of the client. Unless expressly agreed otherwise, installation and commissioning (Go Live) shall be carried out by the client. ITP may, at the client's request, support the client during commissioning and installation in return for appropriate remuneration, but without assuming responsibility for the success/system.
- (4) The details of the service content (e.g. schedule) shall be defined by the contracting parties in an individual contract or the individual contract documents or, in the absence of a written individual contract, shall be derived from the order correspondence.
- (5) ITP shall only be obliged to provide user documentation and user assistance for individually created or customized software only if this is expressly agreed. The same applies to process descriptions and interface documentation.
- (6) Insofar as documentation is agreed, this shall be owed with the content and formats usually created by ITP, of which the client may receive sample documentation in advance.
- (7) The electronic provision of documentation is sufficient.

§ 4. Change request procedures and modifications

- (1) If the client has a change request (hereinafter "Change Request") in relation to its original task, it may request ITP to check the technical feasibility of the Change Request within a reasonable period of time and to inform it of how this affects the content of the contract, the schedule and the agreed remuneration.
- (2) ITP shall always begin with the implementation of the change request only after the client's approval or order.
- (3) Insofar as ITP proposes a necessary or expedient change to the specifications/detailed concept, the client may only object to the change if there is a legitimate interest. The objection must be made immediately.
- (4) If the client does not comply with the change request procedure in its change request, ITP may invoice the change requested by the client separately as a subsequent extension of the order on a time basis in accordance with the agreed hourly rates.

§ 5. Inspection and testing

- (1) Insofar as the services or partial services of ITP are subject to the law on contracts for work and services, ITP may demand a written declaration of acceptance by the client and/or the preparation of a joint acceptance report. In particular, ITP may make the continuation of its services dependent on a partial acceptance or acceptance of a self-contained service. If acceptance is excluded or not required due to the nature or content of the service, acceptance shall be replaced by delivery of the service.
- (2) The acceptance test shall take place prior to commissioning (go-live) on the client's test system. ITP shall notify the client of readiness for acceptance in good time before the planned go-live date. The contracting parties shall carry out the acceptance test together within 2 weeks of this notification.
- (3) Acceptability is deemed to exist if the services are essentially free of defects and all requirements specified in the detailed concept approved by the client (or alternatively, if no approved detailed concept exists, in the terms of reference) are fulfilled. For this purpose, ITP shall draw up a test plan - possibly already together with the client upon conclusion of the contract or with the detailed design - which lists all essential functions and business processes, and which forms the

basis for the acceptance test. If the test plan is not already part of the contract documents, ITP shall provide the test plan to the client at the latest with the notification of readiness for acceptance. The client must approve the test plan or notify ITP of any additions within 2 weeks of receipt of the test plan. After the expiry of 2 weeks, the test plan shall be deemed to have been approved, provided that the client was informed of this deadline and the legal consequences of failure to meet this deadline when the test plan was sent. In the event of requests for changes, the contracting parties shall jointly discuss whether these are justified. If no agreement can be reached, the changes shall be included in the test plan with a reservation and the acceptance test shall be extended to include these changes, but without legal prejudice.

- (4) The client may refuse acceptance due to significant defects and may declare acceptance subject to reservation in the case of insignificant defects. Should the contracting parties fail to agree during the acceptance test whether a defect exists or whether a defect is material, the contracting parties shall note their respective assessments as disputed in the acceptance report. The protocol must nevertheless be countersigned by both contracting parties for the purpose of documentation, even if the client does not declare acceptance due to differing assessments. Both parties should receive a copy of the acceptance report.
- (5) Defects are material if they prevent or hinder operations. Impeding operation means that the use of the entire system or an essential function from the test plan is impossible. A defect that impedes operation is deemed to exist if the use of the entire system or an essential function from the test plan is significantly restricted and the defect cannot be temporarily circumvented in a reasonable manner. Other defects are insignificant.
- (6) Defects or functions not yet implemented which are insignificant but still require rectification before the go-live shall be recorded in the acceptance report or in a list of open points ("OP list"). A go-live by the client may only take place when the OP list has been processed or an express release for the go-live has been given by ITP.
- (7) If the client does not declare acceptance due to a lack of acceptance capability, ITP shall be entitled to two further acceptance tests within a reasonable period of time. Acceptance shall only be deemed to have failed if, even after these tests, acceptance capability is not achieved for reasons for which ITP is responsible.
- (8) Acceptance shall be implied - irrespective of an acceptance test - if the client uses the services in operation for a period of 4 weeks without giving written notice of defects - insofar as these are recognizable.
- (9) Irrespective of the acceptance under the contract for work and services, the client shall check the services for completeness and freedom from defects within the scope of its obligations to cooperate and on the basis of its knowledge as a software user, in particular before the services are used in its operational business.

§ 6. Remuneration and payment

- (1) All services shall be invoiced on a time and material basis in accordance with the agreed hourly consultancy rates in the respective contract or as a fixed price for the services plus statutory VAT.
- (2) Unless otherwise stipulated in the contract, payments are due immediately and without deduction after invoicing. The client shall be in default upon expiry of the payment deadline. During the period of default, the remuneration agreement shall bear interest at the applicable default interest rate. ITP reserves the right to claim further damages for default.
- (3) Expenses, travel time and travel costs (hereinafter "incidental costs") are generally not included in the remuneration for services pursuant to para. 1. The calculation of ancillary costs shall be based on the conditions agreed in the respective contract. In the absence of a contractual provision,

incidental expenses shall be remunerated as follows, in particular if travel is undertaken at the express instigation of the Client:

- a. Travel expenses as per receipt according to the actual amount incurred or, in the case of travel by car, at EUR 0.65 per kilometer,
- b. Travel times are deemed to be working hours at 50% of the hourly consultant rate, and
- c. Expenses at the applicable statutory expense allowance.
- d. Hotel, train, cab, etc. shall be invoiced on the basis of receipts.

§ 7. Term and cancellation

- (1) Individual orders shall enter into force upon the signing of the respective order form and shall end upon the provision of all services commissioned in connection with the said project. The contractual relationship shall end without the need for express notice of termination.
- (2) Both contractual parties are entitled to terminate the contract without notice for good cause. Good cause shall be deemed to exist in particular if the other contracting party breaches material provisions of these General Terms and Conditions (e.g. payment of invoices due) or is unable to comply with these provisions and fails to comply with the corresponding provisions of these General Terms and Conditions even after a written warning setting a reasonable deadline.
- (3) In the event of ordinary termination or in the event of termination for good cause of the respective contract by the client, ITP shall be entitled to remuneration for the services rendered up to the effective date of termination (this shall also include any retentions) and ancillary costs in accordance with the above conditions. If the contracting parties have agreed a fixed price, the services and ancillary costs rendered by the Contractor up to the effective date of termination shall be invoiced on a time and material basis based on the hourly rates and ancillary costs agreed in the respective contract or, in the absence of a contractual agreement, in accordance with the above terms and conditions.

§ 8. Reservation of title

- (1) The objects of the deliveries (goods subject to retention of title) shall remain the property of ITP until all claims to which ITP is entitled against the client arising from the business relationship have been fulfilled.
- (2) The processing or transformation of ITP delivery items by the client shall always be carried out for ITP.
- (3) In the event of seizure, confiscation or other dispositions or interventions by third parties, the client must inform ITP immediately.
- (4) If the value of the security interests to which ITP is entitled exceeds the amount of the secured claims by more than 10%, ITP shall release a corresponding part of the security interests at the request of the client.
- (5) ITP reserves the right to ownership rights, industrial property rights or items similar to industrial property rights of any kind (e.g. patent rights, trademark rights, utility model and design rights, copyrights) over and above the delivery item, in particular to the documents provided by ITP in physical or electronic form (e.g. presentations, calculations, concepts, specifications, know-how) and to software.

§ 9. Participation of the client

- (1) The client shall support ITP comprehensively and to the best of its ability in the provision of services, in particular by setting out the specifications precisely and in writing, answering questions without delay, interim reviews of the work results and tests. Any disadvantages and additional costs arising from a breach of this obligation shall be borne by the client. Agreed performance deadlines presuppose the clarification of all technical questions, the availability of the necessary approvals and documents and compliance with the obligations incumbent on the client up to that point.
- (2) In addition to the obligations to cooperate listed in the respective contract, the cooperation of the client includes in particular the free and timely provision of all resources, information, information, approvals and documents necessary for the successful provision of the service as well as an appropriate infrastructure including workstations, IT, communication and other facilities.
- (3) The client shall appoint a qualified contact person, i.e. one who has sufficient skills and experience as well as decision-making powers within the client's company, who is available to ITP for necessary information and who makes decisions or brings about decisions without delay. Failure to do so may result in considerable additional expenses to be paid by the client.
- (4) The client itself shall be responsible for backing up its data in accordance with the latest state of the art. In the absence of express written instructions, ITP's employees shall always assume that all data with which they may come into contact has been backed up.
- (5) The services to be provided by the contractor constitute a genuine obligation and not merely a duty. If the provision of services by ITP is delayed because the client fails to perform one of its obligations to cooperate or provide materials as agreed or on time, or otherwise due to acts or omissions by the client or third parties commissioned by the client, ITP may - without prejudice to further rights - demand a corresponding reasonable adjustment of the contractual agreements (e.g. changes to the schedule and remuneration). If ITP incurs additional expenses due to improper or untimely provision of the cooperation services, ITP may invoice the client separately for these additional expenses, applying the hourly consultancy rates agreed in the respective contract.

§ 10. Warranty

- (1) If the contracting parties do not agree on a specific quality of services or partial services, the liability for defects shall be limited to the fact that the service or partial service is suitable for the contractually stipulated, otherwise usual, use and is customary for services of this type.
- (2) In the event of defects, ITP may initially, at its discretion, provide the client with a new, defect-free service or remedy the defect by rectification. Claims of the client for reduction of the agreed remuneration or withdrawal or termination without notice are excluded as long as attempts at rectification by ITP continue and have not finally failed. Other claims for material defects are excluded. Expenses for the rectification of material defects by third parties and contract costs shall not be owed by ITP. Compensation for damages or reimbursement of futile expenses shall be owed by ITP in accordance with § 12.

§ 11. Compensation and reimbursement of expenses

- (1) ITP shall not be liable for damages or reimbursement of expenses on any legal grounds whatsoever - in particular due to defects, breaches of duties arising from the contractual obligation or tort. This applies in particular, but not exclusively, to claims for damages due to loss of turnover or profit, financing costs and damages due to operational downtime or loss of production.

This exclusion of liability shall not apply in the event of

- a. Intent or gross negligence,
- b. Liability based on the Product Liability Act and
- c. Culpable injury to life, limb or health.

In addition, ITP shall also be liable in accordance with the statutory provisions in the event of a breach of material contractual obligations (i.e. obligations whose fulfillment is essential for the proper performance of the contract and on whose contract in the first place and on the fulfillment of which the client regularly relies and may rely (so-called cardinal obligations)).

§ 12. Intellectual property and infringement of third party rights

(1) ITP shall remain the owner of all materials which are or may be protected by industrial property rights or similar rights of any kind (e.g. patent rights, trademark rights, utility model and design rights, copyrights) and whether registered or not ("intellectual property rights") ("materials") and to which ITP is entitled at the time of conclusion of the respective contract or which are developed by ITP (or by third parties on its behalf) after conclusion of the respective contract ("ITP materials"). The same applies to adaptations, modifications and further developments.

By handing over the ITP Materials, ITP grants the customer a non-exclusive, perpetual, non-transferable right to use the ITP Materials delivered under these GTC insofar as this arises from the purpose of the respective contract.

(2) The Client shall remain the owner of all materials to which it is entitled at the time of conclusion of the respective contract, or which are developed by it (or by third parties on its behalf) after conclusion of the respective contract ("Client Materials"). The same shall apply to adaptations, modifications and further developments. If these are carried out by ITP, they shall be for the exclusive use and exploitation by the client. The client shall grant ITP a non-exclusive, non-transferable right to use the client materials, limited to the period and purpose of performance of the contract.

(3) ITP shall ensure that no rights of third parties exist which hinder, restrict or exclude the contractual use by the client of the materials supplied by ITP under the respective contract. Should third parties nevertheless assert claims for infringement of their rights, the following shall apply, unless ITP is not at fault for the asserted infringement of property rights:

- a. If a third party asserts an infringement of property rights against the client through the materials created by ITP under the respective contract, the client shall inform ITP of this immediately in writing. He shall leave the defense against these claims to ITP as far as possible and grant ITP all necessary authorizations for judicial and extrajudicial measures. The client shall not recognize claims of the third party without the written consent of ITP. The client shall support ITP to a reasonable extent in the defense against the asserted claims.
- b. If the rights of third parties are infringed, ITP may, at its discretion, either provide the client with an opportunity to use the materials concerned or modify or replace the infringing materials concerned without or only with reasonable consequences for the client in such a way that no more property rights are infringed.
- c. ITP shall indemnify the client against all claims, claims for damages and other costs arising in connection with an alleged or established infringement of property rights. In the event of wrongful prosecution, the client shall assign to ITP any recourse claims to which it may be entitled against the third party.

- (4) If the client modifies the materials supplied by ITP under the respective contract itself or has them modified by third parties, the claims under this § 13 shall lapse unless the client proves that the modifications made by it, or a third party have not caused any infringement of third-party property rights.
- (5) Any further claims by the client due to an infringement of third-party property rights are excluded. This shall not apply in the case of intent, gross negligence, injury to body, health, life or a cardinal obligation.
- (6) The above provisions of paragraphs 3 to 5 shall apply mutatis mutandis in the event that claims are asserted against ITP due to the infringement of third-party property rights by client materials or third-party materials provided by the client.

§ 13. Statutory limitations

- (1) The limitation period for claims and rights due to a material defect or defect of title (damages instead of or in addition to performance, claims for reimbursement of expenses, reduction, withdrawal or subsequent performance) is one (1) year.

Notwithstanding the above, the statutory limitation period shall apply.

- a) with regard to all claims and rights of the client in the case of § 438 para. 1 no. 1 BGB, § 438 para. 1 no. 2 and § 634a para. 1 no. 2 BGB, § 479 para. 1 BGB or fraudulent concealment of the defect by ITP

and in the case of claims for damages additionally

- b) in the event of injury to body, life or health, claims under the Product Liability Act and grossly negligent or intentional breaches of duty.

- (2) The provision on the limitation period stated in § 7 (1) shall apply to all claims and rights due to a defect, irrespective of the legal grounds.
- (3) The limitation period for all claims and rights due to a defect begins with the provision of the service, in the case of purchase transactions with delivery and in the case of work services with acceptance.
- (4) For other claims of the client, regardless of the legal grounds, which are not attributable to defects in the contractual performance, the regular limitation period shall be reduced to two (2) years from the start of the statutory commencement of the statutory limitation period.

§ 14. Force majeure

- (1) If the performance of a contract is impaired by force majeure, in particular due to war, warlike conditions, natural disasters, accidents, labor disputes, official or political arbitrary acts, the deadlines and dates provided for the performance of the services shall be extended accordingly. The client undertakes to negotiate a corresponding adjustment of the contract with ITP with regard to the other contractual conditions (in particular remuneration agreements).
- (2) Insofar as an adjustment to the contract is not economically justifiable as a result of force majeure, both parties shall be entitled to withdraw from the respective contract.
- (3) Statutory rights of termination remain unaffected by these terms and conditions.

§ 15. Confidentiality and safekeeping

- (1) The client is obliged to treat work results provided by ITP and all other information, in particular of a technical and commercial nature, intentions, experience, findings, designs and documents, including pre-existing documents of ITP, which become known to the client as a result of the business relationship (together referred to as "confidential information"), confidentially towards third parties - also for the duration of the business relationship -, not to make them accessible to third parties, to protect them from access by third parties and not to make them the subject of its own property right application.
- (2) The client shall only be entitled to reproduce this confidential information in whole or in part, in whatever form, or to pass it on to third parties subject to the imposition of the obligation of confidentiality with the prior consent of ITP.
- (3) The above obligations shall not apply to such confidential information that was already known to the Client prior to its disclosure within the scope of the business relationship, was independently developed or otherwise lawfully obtained by the Client or is generally known or becomes generally known without breach of these GTC. The burden of proof for the existence of such an exception lies with the client.
- (4) After termination of the business relationship, the documents, including all copies, embodied work results and other confidential information of ITP in the possession or under the control of the client must be returned by the client to ITP in full and without delay.
- (5) The above provisions shall apply mutatis mutandis in the event that ITP becomes aware of confidential information of the client.

§ 16. Privacy Policy

- (1) Both contracting parties undertake to comply with the statutory provisions on data protection. In particular, they shall oblige their employees to comply with data secrecy pursuant to § 53 BDSG (new) and to comply with the principles for the processing of personal data pursuant to Art. 5 GDPR.
- (2) Should ITP have to process personal data in the performance of the respective contract, the client shall conclude an agreement with ITP on commissioned data processing pursuant to Art. 28 GDPR.

§ 17. Final clauses

- (3) Amendments and additions to the contract must be made in writing. This also applies to changes to the written form requirement. E-mail and fax shall also be considered as written form. Verbal side agreements shall not become part of the contract.
- (4) The client may only assert rights of set-off and retention against ITP's claims on the basis of its own legally established or undisputed claims.
- (5) In the event that individual provisions of the contract are invalid, the remaining provisions shall remain valid. The invalid provision shall be replaced by a legally valid provision which comes closest to the economic sense and purpose of the invalid provision. The same applies to loopholes.
- (6) The exclusive place of jurisdiction for all disputes between the contractual partners is Karlsruhe.
- (7) The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between ITP and the client, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).