

# Terms and Conditions for Work and Consulting Services of IBsolution GmbH (Werk-GB)

## § 1 Scope

1.1. In all contractual relationships in which IBsolution GmbH (hereinafter referred to as "IBsolution") provides work and consulting services to other entrepreneurs, legal entities under public law or special funds under public law (hereinafter referred to as "Customer"), only work and consulting services terms and conditions (hereinafter referred to as "Work Terms and Conditions") of IBsolution apply.

1.2. Conflicting contractual conditions of the customer shall not become part of the contract, even if IBsolution carries out a contract, without contradicting such conditions. This also applies to conditions of the customer which deviate from the law to the detriment of IBsolution, even if the GB of IBsolution do not expressly refer to the validity of the legal regulations in this respect.

1.3. These GB also apply to future contractual relationships between IBsolution and the customer, even if this is not pointed out again.

## § 2 Conclusion of contract

2.1. Offers from IBsolution are subject to confirmation and non-binding, unless expressly designated as binding or limited in time. In case of a not exactly specified commitment or time limit, IBsolution is bound for 14 days after submission of the binding or limited offer. A contract for deliveries and services is concluded by signing it or by IBsolution executing the contract. The customer is bound to contract offers for the conclusion of contracts for four weeks. In case of doubt, the offer and the order confirmation of IBsolution are decisive for the contents of the contract.

2.2 Information and representations in product and project descriptions, documentations etc. do not represent a guarantee declaration of IBsolution for the quality of the deliveries and services, unless IBsolution expressly declares this in writing.

## § 3 Deliveries and services

3.1 As a rule, IBsolution provides work and consulting services on the basis of the customer's specifications. The customer has checked that the requirements listed in the requirement specification correspond to his wishes and needs.

3.2 As far as the requirements to the achievements are not independently given by the customer, IBsolution is ready to support the customer against separate commissioning and remuneration according to the current price list with the requirement specification production or to provide the requirement specification independently. The specification sheet created jointly or exclusively by IBsolution will then be checked and approved by

the customer. If the customer detects defects, gaps or contradictions during the examination, he will inform IBsolution immediately and IBsolution will improve the requirement specification. If the rectifications are not supplementary performance, IBsolution can demand a remuneration according to expenditure. The requirement specification is the binding basis for the performance of the services. For changes § 6 of these special conditions applies.

3.3 If necessary, the contracting parties shall agree further milestones and performance stages within the framework of project development and implementation, upon the achievement of which the client shall review and approve the performance status. In this case, the respective performance status is considered accepted at the latest one week after the time at which IBsolution presents the respective work results or has communicated the achievement of the performance status, unless the customer notifies defects in writing and in a comprehensible manner.

3.4 If IBsolution carries out developments according to the specifications and specifications of the customer or if IBsolution integrates software or other components of third parties or the customer himself at his request into systems or adapts his own systems to the given components, IBsolution does not assume any responsibility for the technical and legal properties of these third-party components. In particular, the customer shall indemnify IBsolution against claims for damages asserted by third parties against IBsolution due to infringement of foreign patents, copyrights, trademarks or other industrial property rights.

3.5 IBsolution decides which employees it deploys and reserves the right to replace them at any time. IBsolution is basically anxious not to cause any unnecessary fluctuation among the employees used to perform the work and consulting services; however, there is no claim to the use of constant employees.

3.6 Contract objects, documents, proposals, etc. from IBsolution, which are made accessible to the customer before or after conclusion of the contract, are intellectual property of IBsolution and must be kept secret by the customer as business and trade secrets (cf. § 13).

3.7 The employees of IBsolution do not enter into an employment relationship with the client. The customer will give instructions exclusively to the responsible employee named by IBsolution with effect for and against IBsolution. IBsolution is at liberty to use subcontractors for the provision of goods and services.

## § 4 Rights of IBsolution and retention of title

4.1 All rights to work results of IBsolution, above all to software, are exclusively entitled to IBsolution in relation to the customer, also as far as software was created by specifications or cooperation of the customer.

4.2 Paragraph 1 shall apply mutatis mutandis to all other documents and information (work results) which may have been made available to the Client within the framework of the initiation and execution of the contract, including subsequent performance, training, support and maintenance.

4.3 The contractual partners are at liberty to expressly and in writing designate individual software and other work results individually programmed for the client as "exclusive material". In this case the client receives the exclusive, transferable, irrevocable and temporally, spatially and objectively unrestricted right of use and ownership. In this case, the Customer shall be entitled to reproduce, translate, revise, distribute the exclusive material and to grant sub-licenses, to make it available to third parties for distribution, to demonstrate it, to exploit it commercially and to report on it publicly. The client receives the source code including the development documentation and all other documents in copy or in the original. IBsolution is, however, not prevented from developing materials, software and work results and from making them available for use by third parties that are similar to the exclusive material supplied to the customer.

4.4 IBsolution reserves the right of ownership of the delivery items until receipt of all payments from the respective contractual relationship as well as from all open claims from this and all past and future contracts with the customer. In case of behaviour contrary to the contract on the part of the customer, in particular in case of default of payment, IBsolution is entitled to extraordinary termination, refusal of performance and repossession of the delivery items after reminder and setting of a deadline and the customer is obligated to surrender them. In case of seizures and other interventions by third parties, the customer shall inform IBsolution immediately in writing. IBsolution will release the securities to which it is entitled at its own discretion and at the request of the customer insofar as the value of all security rights to which IBsolution is entitled exceeds the amount of all secured claims by more than 20%.

## § 5 Cooperation of the client

5.1 The customer shall provide IBsolution with all information required for the execution of the contract in good time, shall promptly check the results of the work and shall immediately notify IBsolution in writing of any possible disturbances and defects, giving a precise description of the defect. In no case IBsolution waives the objection of delayed investigation and complaint. The provision of cooperation services does not entitle the customer to a fee, discount or similar

5.2 As far as it is necessary or useful for the fulfillment of the contract, the customer supports IBsolution free of charge during the execution of the contract by providing IBsolution in time and to the necessary extent with e.g. employees, work rooms, the corresponding EDP environment,

telecommunications equipment and data and by cooperating in specifications, tests, acceptances, etc. The customer shall ensure that his employees have the necessary skills and experience for the support services. If an employee of the client does not provide the required service, the client will name suitable additional or other employees as replacements. In particular, the customer provides a workstation with a computer with Internet access (access to the mail server of IBsolution) and telephone for the employees of IBsolution who provide the services at the customer's site and in his agreement. He grants IBsolution access to hardware and software directly and by means of remote data transmission.

5.3 The customer provides the working environment of the software (e.g. hardware and operating system) according to the specifications of IBsolution. It is in his area of responsibility to ensure the proper operation of the necessary working environment of the software if necessary by license and maintenance contracts with third parties. In particular, the customer shall observe the requirements of the documentation and the information provided by IBsolution.

5.4 Each contractor shall designate a project manager (including, where appropriate, his representative), contact details (address, telephone number and e-mail address) under which they can be contacted, who shall be responsible for the project and its implementation, and who shall take the necessary decisions.

5.5 The project managers as well as their respective deputies are exclusively authorized and entitled, in addition to the management, to make all project-relevant decisions and declarations of intent, in particular to notify defects and declare acceptance.

5.6 IBsolution can create a protocol about a project meeting, which becomes binding on both sides, if IBsolution leaves it to the customer and the customer does not contradict the protocol within one week in writing with reason.

5.7 If the customer provides third party software within the scope of the deliveries and services to be provided by IBsolution (e.g. application managing or hosting), he is responsible for ensuring that IBsolution receives from the third party licensors the necessary rights of use for the third party software. He exempts IBsolution from all claims of third parties due to legal violations (including court and attorney fees) on first request. If a third party credibly asserts its own rights to software provided by the customer to IBsolution, among other things, so that the provision of services by IBsolution violated these rights with assumed correctness, IBsolution will inform the customer of this. If the customer does not refute these assertions of the third party within 14 days after IBsolution's notification, IBsolution will discontinue all services in connection with the third party software concerned and return the third party software concerned to the customer, unless the customer

demands this already before or a corresponding judgement or official order is issued.

5.8 The customer shall bear any disadvantages and additional costs arising from a breach of these obligations. If the customer does not comply with his obligations to cooperate, IBsolution will not be in default if the cooperation service was necessary for the provision of services by IBsolution. If missing, incorrect, incomplete or subsequently corrected cooperation leads to additional expenditure, IBsolution can invoice this, unless IBsolution is at fault for the insufficient cooperation. Other claims of IBsolution remain unaffected.

## **§ 6 Changes and Enhancements (Change Requests)**

6.1 IBsolution endeavors to take into account a request of the customer for changes and extensions of the deliveries and services (change requests). Each contractual partner can demand changes and additions to the agreed services in writing. IBsolution can refuse to execute a change or extension request of the customer if the changes or extensions are not feasible or if IBsolution cannot reasonably be expected to execute them within the scope of its operational capabilities.

6.2 In the case of a change request, the customer will commission IBsolution with its analysis. IBsolution determines in this case within a period to be agreed upon the effects on the agreed upon scope of services and if necessary necessary changes of the time schedule and presents them in writing in a supplementary offer.

6.3 For the examination of a change or extension request and for the elaboration of supplementary offers IBsolution can demand a remuneration according to expenditure according to the current price list. IBsolution can also demand separate remuneration for any downtime costs caused by the customer's request for change. Subject to any other regulation in the supplementary contract, execution periods shall be extended by the number of calendar days on which the contractual work had to be interrupted due to the change request, as well as by a reasonable restart time.

6.4 Changes to the agreed scope of services and other adjustments to the contract shall be agreed in writing in a supplement to the contract. If the contracting parties do not agree on a contract adjustment within two weeks after receipt of the supplementary offer from IBsolution, IBsolution will execute the contract without consideration of the change request.

## **§ 7 Place of delivery, time of delivery and performance**

7.1 Unless otherwise agreed, the place of performance is the registered office of IBsolution. Specified deadlines and dates for all deliveries and services are only fixed dates if this has been expressly agreed. Delivery dates are subject to correct and timely self-delivery, unless IBsolution is responsible for the non-delivery by the pre-

supplier. Partial deliveries are permissible as far as the delivered parts can be used in an isolated and meaningful way. Each partial performance or delivery can be invoiced separately.

7.2 If IBsolution waits for the cooperation or information of the customer or is prevented from fulfilling the contract by strike, lockout, official intervention, force majeure or other unforeseen events through no fault of IBsolution's own, delivery and service deadlines shall be deemed extended by the duration of the hindrance and by an appropriate start-up period after the end of the hindrance. IBsolution will inform the customer of the hindrance.

7.3 IBsolution will try to catch the delay in case of creditor delay of the customer (in particular in case of non-call of services and consulting performances despite maturity). If this is not possible, IBsolution can invoice the customer for the services not called up, provided that IBsolution cannot use the provided employees elsewhere.

## **§ 8 Price, Payment, Reservation**

8.1 As far as no price is contractually agreed, the current price list of IBsolution valid at the time of the conclusion of the contract is valid. All prices are subject to the statutory value added tax applicable at the time.

8.2 The invoice is issued when the respective (partial) delivery or (partial) service is rendered. Ongoing services are invoiced monthly or at the end of the project. Unless otherwise agreed, fixed prices shall be invoiced at one third after conclusion of the contract, one third after achievement of the first agreed milestone and one third after provision of the delivery or service. Payments are due immediately upon receipt of the invoice and are to be made within 14 days without deduction.

8.3 The client may only offset undisputed or legally established claims from the same contractual relationship. The customer is only entitled to a right of retention or the defence of non-performance of the contract within this contractual relationship and only in the event that IBsolution itself has committed a gross breach of contract or has already received the value of the remuneration corresponding to the value of the delivery or service for a defective delivery or service, or if the counterclaim of the customer has been legally established or is undisputed.

8.4 IBsolution can increase the cost-dependent remuneration for current services as well as for recurring license fees by written notification to the customer with a period of three months. The increase becomes effective upon invoicing, at the beginning of a calculation period or on the date stated in the notification.

## **§ 9 acceptance**

9.1 In the case of contracts for work and services, the contracting parties shall carry out an

acceptance test, insofar as this is provided for by law. The customer shall declare acceptance in writing as soon as the service has been rendered in an essentially correct, complete and defect-free manner. The customer shall only refuse acceptance if the services have significant defects or defects that cannot be repaired. The customer will carry out the acceptance test within the agreed period, in the absence of an agreement within 14 days from the notification of readiness for acceptance by IBsolution in cooperation with this. The execution of the acceptance test belongs to the essential cooperation duties of the customer.

9.2 During the acceptance test, the customer and IBsolution shall jointly prepare a protocol from which the test cases/test data, any functional tests carried out and the defects identified emerge. Defects are divided by the contracting parties as follows:

- Category 1 (process preventing defect): The delivery and service cannot be used. The defect cannot be circumvented with organizational or other economically justifiable aids.

- Category 2 (process-impeding defect): The use of the delivery and service is impaired, but can essentially take place. The defect can be circumvented with organizational or other economically justifiable aids.

- Category 3 (other defects): The defect has no significant impact on the functionality and usability of the delivery and service. The use of the delivery and service is not or only insignificantly restricted.

9.3 The Client shall declare acceptance if no Category 1 defect has occurred. Category 2 defects shall be remedied as far as possible during the acceptance test. Any Category 2 and Category 3 defects remaining after acceptance shall be remedied within the framework of subsequent performance.

9.4 In subsequent acceptance tests, only those functionalities and sections of the deliveries and services that have not yet been tested and accepted ("delta") as well as the interaction of these functionalities and sections with the components that have already been accepted and tested are tested.

9.5 Acceptance shall also be deemed declared if the customer expresses his approval of the service in another way, e.g. by using it in productive operation or by failing to respond to a request for acceptance (in each case for more than one month) or by payment in accordance with the contract.

9.6 IBsolution can demand that the customer nevertheless declares an acceptance/release according to the conditions formulated in this paragraph for deliveries and services for which no acceptance procedure is provided by law (e.g. services and consulting). IBsolution can also demand that the customer declares partial acceptance for delimitable parts of the service. By a partial acceptance the client declares himself in

agreement with the respective performance result. Partial acceptances that have already taken place remain unaffected by the success of the final acceptance.

## **§ 10 Obligation to examine and give notice of defects**

10.1 The customer has an immediate obligation to examine and give notice of defects with regard to all deliveries and services of IBsolution.

10.2 The customer declares complaints with exact description of the problem, in writing at the request of IBsolution. Only the contact person or his deputy (§ 5 Abs. 4) or another qualified employee is authorized to make complaints.

## **§ 11 Defects as to quality and title, other performance disturbances**

11.1 IBsolution guarantees that the description in the contract, the product and service description and the user documentation correspond to the agreed quality and that the contractual use of the work results by the customer does not conflict with the rights of third parties. Defects within the meaning of the warranty are exclusively reproducible errors, the cause of which lies in quality defects of the work results. No defect is therefore a functional impairment resulting from hardware faults, environmental conditions, faulty operation, defective data and other reasons arising from the risk area of the customer.

11.2 If subsequent performance finally fails after expiry of a reasonable grace period to be set by the client, the client may withdraw from the contract or reduce the remuneration. IBsolution shall pay damages or compensation for futile expenses due to a defect within the limits specified in § 12.

11.3 The Customer shall take all reasonable measures to identify, isolate and document defects. This includes the preparation of a defect report, system protocols and memory extracts, the provision of the input and output data concerned, interim and test results and other documents suitable for illustrating the defect. In the event of a warranty claim, he shall provide IBsolution with all available information and support the rectification of the defect in accordance with § 5.

11.4 If IBsolution renders services in the search for or removal of defects without being obliged to do so, it can demand remuneration in accordance with the respectively valid price list. This applies in particular if a reported material defect cannot be proven or cannot be assigned to IBsolution, unless the customer proves that he did not recognize the non-existence of a defect and that he is not to blame for it. In particular, the additional expenditure for the removal of defects, which arises at IBsolution due to the fact that the customer does not properly fulfill his cooperation obligations or does not make use of services/patches recommended by IBsolution, which are offered by IBsolution itself or by third parties, is to be reimbursed.

11.5 If a third party asserts claims that conflict with the exercise of the rights of use contractually granted to the customer by IBsolution, the customer shall inform IBsolution immediately in writing and comprehensively. The customer already now authorizes IBsolution to conduct the dispute with the third party in and out of court alone. If IBsolution makes use of this authorization, which is at its discretion, the customer will not recognize the claims of the third party without the consent of IBsolution and IBsolution is obliged to defend the claims at its own expense and to indemnify the customer from all costs and damages associated with the defence against claims within the limits specified in § 12, as far as these are based on a defect of title for which IBsolution is responsible.

11.6 The limitation period for claims for subsequent performance pursuant to paragraphs 1 to 2 shall be one year. This shall also apply to claims arising from rescission and reduction pursuant to para. 3 sentence 1 and to claims for damages. The shortening of the limitation period shall not apply in the event of intent or gross negligence on the part of IBsolution, fraudulent concealment of the defect, personal injury or defects of title.

11.7 If IBsolution does not provide services or does not provide services properly outside the scope of liability for material defects and defects of title, or if IBsolution commits any other breach of duty, the customer must always notify IBsolution of this in writing and grant IBsolution a grace period within which IBsolution is given the opportunity to properly perform the service or to remedy the situation in any other way. For damages or compensation of futile expenses, the limits specified in § 12 shall apply.

11.8 If IBsolution has provided or sold third party software to the customer as part of its deliveries and services, the customer will first take legal action against the third party licensor in case of defects which only concern the third party software but not the services of IBsolution (including the integration and parameterization of the third party software). IBsolution hereby assigns its warranty claims against the third party licensor to the customer for this purpose. A warranty obligation on the part of IBsolution exists only to the extent that the customer cannot indemnify the third party licensor from the assigned claims. As far as IBsolution satisfies the claims of the customer, existing defect claims against the third party licensors fall back to IBsolution (reassignment). This also applies to deliveries and services of other third parties which IBsolution has redistributed to the customer.

## **§ 12 liability**

12.1 In all cases of contractual (also pre-contractual) and non-contractual liability IBsolution shall pay damages or compensation for futile expenses only to the following extent:

a) in the case of intent and in the case of assumption of a guarantee with regard to the guaranteed quality in full;

b) in the case of gross negligence, compensation for the foreseeable and typical damage which should be prevented by due diligence;

c) in other cases only in case of breach of an essential contractual obligation, so that the achievement of the contractual goal would be endangered (cardinal obligation), as well as in case of impossibility, for claims arising from liability for defects and from default, namely to compensation for the foreseeable and typical damage, but limited to

- in the case of an individual contract, per individual loss event and in total for all individual loss events together up to the respective contract value;

- Liability is limited to EUR 50,000.00 per claim in the cases specified in Section 12.1 (c), up to a maximum of twice the contractual amount.

12.2 The objection of contributory negligence remains open, in particular in the event that the customer only insufficiently ensures data security. IBsolution is only liable for the loss of data in case of slight negligence according to paragraph 1, if the customer has backed up his data in intervals adequate for the application according to the state of the art, so that these can be restored with justifiable effort.

12.3 The statutory liability for personal injury and under the Product Liability Act remains unaffected.

12.4 A limitation period of one year applies to all claims against IBsolution for damages or compensation for futile expenses in the case of contractual and non-contractual liability. This does not apply to liability in the case of intent or gross negligence, fraudulent intent, personal injury or under the Product Liability Act. The statute of limitations begins at the end of the year in which the claim arises as well as the knowledge or grossly negligent ignorance of the circumstances giving rise to the claim and the person of the debtor and occurs at the latest five years after the claim arises. The limitation period for material defects and defects of title in § 11 para. 7 remains unaffected.

### **§ 13 Confidentiality and data protection**

13.1 The contracting parties undertake to treat all knowledge of confidential information and trade secrets of the respective other contracting party acquired in the course of the performance of the contract as confidential for an unlimited period of time and to use such information and trade secrets only in the course of the performance of the contract. The trade secrets of IBsolution also include the software as well as the know-how, processes, techniques and concepts, customer and partner information, information on the third party software used, flowcharts, documentation and product specifications and the conditions of the contract with the customer. The contracting

parties keep and protect the confidential information and trade secrets (in particular software) according to the state of the art and with a usual effort in such a way that abuse by third parties is unlikely.

13.2 Excluded from the obligation to maintain secrecy is information which was demonstrably generally known and accessible at the time of disclosure or which was already known to the receiving contracting party at the time of disclosure or which was made available by third parties in a justified manner or which was developed by the receiving contracting party independently of the notification.

13.3 The customer may only make software and other work results accessible to employees and other third parties to the extent that this is necessary for the exercise of the rights of use granted to him. In all other respects he shall keep all objects of the contract secret. He will instruct all persons, to whom he grants access to these, about the rights of IBsolution to the contractual objects and the obligation to keep them secret and oblige these persons to comply with these rules.

13.4 IBsolution observes the rules of data protection law. As far as personal data are processed, IBsolution will obligate the employees entrusted with this to data secrecy (§ 5 BDSG). As far as IBsolution gains access to the hardware and software of the customer (e.g. for remote maintenance), this is not intended as business processing or use of personal data by IBsolution. Rather, a transfer of personal data happens only in exceptional cases as a secondary consequence of the contractual services of IBsolution. IBsolution has in this respect the position of an order data processor according to § 11 BDSG. With these personal data IBsolution will proceed according to the instructions of the customer as well as the regulations of the BDSG and the other relevant protection regulations. IBsolution is entitled to pass on personal data to subcontractors, if such a passing on is necessary for the performance of the respectively ordered delivery or service. IBsolution will oblige the subcontractors to comply with the applicable data protection law. The customer is responsible for ensuring that all legal requirements are met so that IBsolution can fulfill the contract with regard to data protection law without violating any legal provisions. This applies e.g. to the obtaining of declarations of consent of the persons concerned in the case of a possible processing of their personal data.

13.5 IBsolution is entitled to include the customer in its reference customer list. For the rest, the naming of the respective other contractual partner for advertising purposes requires his consent.

### **§ 14 End of contract, termination**

14.1 The client may terminate contracts for work and services at any time. In this case the legal regulation applies. In the case of long-term

14.2 Each contracting party may terminate the contractual relationship for good cause. Notice of termination must be given in writing to be effective. An important reason exists in particular if

- the other contracting party ceases payments, applies for insolvency proceedings or comparable legal proceedings or if such proceedings are opened or their opening is refused due to lack of assets;

- claims of the other contractual partner are seized and the seizure is not lifted within two weeks;

- The client has violated his obligation to cooperate considerably or has violated the terms of use in a not only insignificant way.

14.3 Termination for good cause must be preceded by a written warning with threat of termination and setting of a deadline, unless the delay would be unreasonable for the terminating party.

### **§ 15 concluding provisions**

15.1 The conclusion of the contract, all amendments and supplements to the contract as well as notices of termination, reminders and deadlines and other contractual declarations must be in writing in order to be effective. This requirement of written form can only be waived expressly and in writing by the contracting parties. The contractual partners do not satisfy the requirement of written form by sending documents by fax or e-mail. Verbal ancillary agreements have not been made. Appendices are part of these GB and the respective contract.

15.2 Should a provision in these GTC or any other agreement between the contracting parties be or become ineffective or should these be incomplete, the remaining content of the contractual relationship shall not be affected. The contracting parties shall replace the ineffective provision by a provision which comes closest to the meaning and purpose of the ineffective provision in a legally effective manner. The same applies to any loopholes in the contract.

15.3 German law shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising from and in connection with this contractual relationship is Heilbronn. IBsolution can also sue the customer at his place of business or at any other competent court of jurisdiction according to national or international law.

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