



UNDERGROUND_8 GT&CS

GENERAL TERMS & CONDITIONS OF UNDERGROUND_8 SECURE COMPUTING GMBH, FREI-STÄDTERSTRASSE 313, 4040 LINZ AUSTRIA

1. PREAMBLE

1.1 The contractor receives orders, sells, leases and delivers solely on the basis of these General Terms and Conditions. The conditions that follow apply to all services which the contractor or subsidiary named by them carries out within the context of this Contract.

1.2 Verbally agreed amendments or additions to this Contract are only effective if they have been confirmed in writing by the contractor.

1.3 The customer's Terms and Conditions are expressly excluded for the legal transaction at issue and the business relationship as a whole.

1.4 The Contract comes into force when the contractor either sends a written acceptance of the order or delivers the ordered contractual items within the term of acceptance.

1.5 Offers are in principle subject to confirmation.

2. DELIVERY

2.1 Delivery is at the expense and risk of the customer.

2.2 Part deliveries are possible.

2.3 The customer must submit claims arising from transportation damage to carrier and contractor in writing immediately after receipt of the goods, but at the latest within eight days.

2.4 Storage measures and storage costs that are necessary for reasons which lie within the customer's domain are at the customer's expense and the goods are deemed to have been delivered.

2.5 Factually justified and reasonable changes to the contractor's contractual obligation and delivery commitment, in particular reasonable delays in delivery, are deemed to have been authorized by the customer beforehand.

2.6 Where no firm deal has been agreed advised delivery dates are deemed to be merely approximate. Acts of God (Force Majeure) or other unforeseen obstructions in the contractor's or their sub-contractor's domain discharges the contractor from having to adhere to the agreed delivery period.

2.7 Shutdowns and congestion and incorrect delivery by sub-contractors are also regarded as acts of God and absolve the contractor for the duration of the obstruction or, if the contractor chooses, also definitively from the delivery obligation without claims arising for the customer on the basis of the contractor's withdrawal.

2.8 If the stipulated delivery date is exceeded by more than 30 days the customer, after setting a minimum of a further 90 day final deadline, is entitled to withdraw from the contract by means of registered letter. If, following order confirmation, the customer withdraws from their contract for other reasons, they are obliged to pay the contractor costs that have accrued as a result of their withdrawal immediately after billing. The contractor can also withdraw if delivery is impossible owing to acts of God, industrial disputes or other obstructions that the contractor cannot avoid such as transport disruptions or production stoppages. In both cases the contractor is only obliged to reimburse payments that have been received without paying interest.

2.9 The contractor is free to choose the method for dispatching goods and the transportation means.

2.10 The place of execution for delivery and payment is the contractor's registered office.

3. SCOPE OF SERVICES

3.1 The Contract can include the delivery, sale and leasing of goods as well as the design of a software application, an inventory of the existing software system, the creation of a requirements definition for the future software system, implementation of the requirements definition in functional specifications, project management, creation of individual software, the sale of software and hardware, training and changeover support, maintenance and software development, transference of copyrights and related rights, production of storage media, online operation, online support, patch operation, database management, WAN (Wide Area Network) support, LAN (Local Area Network) support and other services.

3.2 The basis for creating individual programs is the written specification of services which the contractor devises against costing on the basis of the documents and information with which they have been provided or which the customer provides. This specification of services shall be checked by the customer for accuracy and completeness and shall be provided with their mark of consent. Desired changes that subsequently arise can lead to separate deadline and price agreements.

3.3 Individually created software or program adaptations require program acceptance by the customer for the program package concerned in each case at the latest four weeks after delivery. These are confirmed in a customer report (check for accuracy and completeness using the specification of services accepted by the contractor by means of the test data provided). If the customer allows the period of four weeks to elapse without accepting the program the delivered software is deemed to have been accepted on the finish date of the stated period. The software is also deemed to have been accepted when it is used live by the customer. The customer is not entitled to refuse to accept software owing to insignificant shortcomings, provided a consumer transaction is not involved.

3.4 When ordering library (standard programs) the customer confirms knowledge of the scope of the programs ordered with their order.

3.5 If the customer does not confirm acceptance within the stipulated period or if the software is actually used then the software is in any case deemed to have been accepted on expiry of the stipulated period or on initial operation.

3.6 Individual organization designs and programs are devised according to the type and extent of binding information, documents and resources provided in full by the customer.

4. THE CUSTOMER'S DATA AND DOCUMENTS

4.1 All materials, such as storage media, data, check totals, programs and other service information supplied by the customer must be in a condition suitable to the service. The contractor and information processor are not obliged to check the logical content of transferred material (accuracy and completeness, etc.). If excess work, which originates from faulty material or for other reasons for which the customer is responsible, results for the information processor this will be charged for at the respectively applicable rates in addition to the agreed fee.

4.2 Item 4 does not apply to consumer transactions.

5. PRICES

5.1 The stated prices are for transportation, insurance, installation and set-up costs only and unless explicitly stated do not include sales tax. An additional charge will be made to the customer for these costs.

5.2 The prices are calculated in Euros unless otherwise agreed.

5.3 The prices valid on the delivery date apply to calculation of the prices.

5.4 Dispatch of program media, documentation and specifications of services is at the customer's cost and expense. Additional training courses and explanatory notes requested by the customer will be charged for separately. Insurances are implemented only at the customer's request.

6. PAYMENT

6.1 Where possible billing will take place immediately after delivery.

6.2 After billing payments are due without any deduction and are exempt from charges. The payment conditions fixed for the complete contract apply analogously to invoices for partial deliveries.

6.3 In the case of orders that comprise several units the contractor is entitled to bill following delivery of each individual unit or service.

6.4 The customer is not entitled to withhold payments owing to incomplete deliveries, claims under guarantee or warranty claims or claimed defects.

6.5 Payments received by the contractor first of all pay off compound interest, interest and incidentals, pre-litigation costs, the costs of an enlisted lawyer and debt collection agency, then the expiring capital, starting with the oldest debt.

6.6 The contractor will charge interest in arrears in line with standard banking practice in the event of late payments. The contractor is entitled to allow non-payment to come into force and to call in bills with immediate effect accordingly in the event of failure to pay two installments in the case of part payment.

7. PROPRIETORSHIP

7.1 The computers, software and accessory parts delivered shall remain the absolute property of the contractor until paid for in full (including interest and costs). The customer has to provide proper upkeep (maintenance and repair) at their own expense throughout this period. Pledging or transfers by way of security against complete payment is deemed to be excluded.

7.2 If the customer does not duly comply with their obligations arising from the contract the contractor is entitled to retrieve their property at the customer's expense at any time and the customer is obliged to deliver this property.

7.3 The customer is obliged to keep the proceeds attained in such a manner separate and to pay them to the contractor forthwith.

7.4 If the goods are pledged or seized the customer is obliged to inform the contractor of this within three days and provide the contractor with all information required to assert proprietorship.

7.5 If third parties access goods that are still the property of the contractor or make claims the customer is obliged to point out that these goods are the property of the contractor.

7.6 The assertion of reservation of property rights by the contractor does not constitute an avoidance of contract on the part of the contractor.

8. ESTIMATES

8.1 Estimates are drawn up according to best technical knowledge but cannot be assumed to be a guarantee of accuracy.

8.2 All offers are subject to change. The costs for drawing up an estimate, where they occur, will be charged to the customer.

9. REMINDER FEES AND COLLECTION FEES

9.1 In the event of late payment the customer is obliged to refund the contractor all pre-litigation expenditures they have made, such as lawyer's fees and debt collection agency costs.

9.2 If the contractor carries out debt collection themselves the customer is obliged to pay 15 Euros per reminder (or other agreed currency), plus the interest and costs that otherwise accrue.

9.3 The customer shall, irrespective of defaulting on late payment, also compensate for any further losses, in particular losses arising from higher interest on possible credit accounts belonging to the contractor as a consequence of non-payment.

10. WARRANTY, GUARANTEE AND LIABILITY

10.1 Within the scope of their warranty or liability the contractor is obliged within six months of delivery to remedy, if they choose at the place of execution, defects in the contractual items which were present on acceptance by rectification, free replacement or credit against returned defective contractual items. This requires a written notice of defects from the customer who lodges this immediately, but at the latest within 30 days of delivery. Other legal consequences of defective contractual items are excluded. The provisions of the respective producer apply to third-party software.

10.2 Wearing parts and accessories (such as storage media) are excluded from warranty as are repairs owing to external influences (such as use of unauthorized storage media or interference by third parties). If the contractual items are used in connection with equipment and/or programs from third parties the warranty exists for deficiencies in operation and performance of the contractual items only if such deficiencies also occur without said connection.

10.3 Other guarantees can be authorized over and above the scope of the warranty. The General Terms and Conditions at issue also apply to these services.

10.4 The contractor is liable for damages only if an offense of malice or gross negligence can be proven against them. In every case liability for consequential damages and financial losses, in particular owing to default, impracticality of the service, lost profits, savings that were anticipated but did not materialize, damages resulting from claims by third parties against the customer, consequential damages and damage to recorded data is excluded, where legally permissible.

10.5 If a contractor is to deal with a significant defect in the software program the customer, for the purpose of more precise examination of potential faults, is obliged to make the computer system they use, the software program, records, diagnostic documents and data available free of charge to the contractor to a reasonable extent during normal working hours for testing purposes and to assist the contractor. Detected faults which are to be dealt with by the contractor shall be remedied by the contractor within a reasonable period.

10.6 The contractor is exempt from this obligation if defects that are in the customer's domain prevent it or these defects are not eliminated by the customer.

11. OFFSETTING

The customer foregoes the possibility of offsetting. However this does not apply in relation to consumers in the event of contractor insolvency or counterclaims that are being legally disputed or have been decided or recognized by a court. The possibility of offsetting exists for the consumer in these cases.

12. ACTS OF GOD (FORCE MAJEURE)

Acts of God or other unforeseen obstructions in the contractor's domain discharge the contractor from having to adhere to the agreed obligations. Shutdowns and congestion in the customer's domain are also deemed to be acts of God and exempt the contractor for the duration of the obstruction from the service that is to be provided without rights to a price reduction resulting for the customer thereby.

13. COPYRIGHTS, ANCILLARY COPYRIGHTS AND USE

13.1 The contractor remains the owner of all copyrights and ancillary copyrights to the software/database including associated documents. This also applies if the customer modifies or processes the software or links it with other software with the provider's consent.

13.2 Existing identifications, copyright notices or property notices belonging to the provider must not be effaced or altered by the customer.

13.3 If the customer infringes the intellectual property rights of third parties the customer has to indemnify the contractor and hold them harmless in this regard if a claim is made against the contractor by third parties as a result of this infringement of intellectual property rights by the customer.

13.4 The software is intended for the customer's own use only. The customer is only given the right to use the software following payment of the agreed fee solely for their own purposes, for the hardware specified in the Contract only and to the extent of the acquired number of licenses for simultaneous use at several workstations.

13.5 The contractor or their licensors are legally entitled to all copyrights to the agreed services (programs, documentation, etc.). The Contract at issue only gives the customer a right of exploitation. Circulation by the customer is excluded in accordance with copyright law.

13.6 No rights over the use stipulated in the Contract at issue are acquired as a result of the customer's collaboration in producing the software.

13.7 The customer is only allowed to produce copies for archiving and data-securing purposes following prior written agreement from the contractor and on the condition that the software does not contain any explicit prohibition by the licensor or third parties, and that all copyright and property notices are also transferred to these copies unaltered.

13.8 If the contractor makes intellectual property belonging to third parties (software, programs, documentation, etc.) available to the customer or if this is sold to the customer, liability on the part of the contractor for the functionality and accuracy of this service, in particular for potential damages which arise for the customer therefrom, is excluded provided a consumer transaction is not involved.

13.9 Any infringement of the contractor's copyrights will result in claims for damages and amends must be made in full in such a case.

14. PREPARATION OF THE INSTALLATION SITE

14.1 In good time before delivery of the item the customer shall at their own cost prepare a space, which complies with the contractor's specifications, with power connections. At the customer's request the contractor will assist in correct preparation of the installation site by way of expert consultation for reimbursement of costs.

14.2 The customer must also check the suitability of the transport routes from entrance to installation site and prepare them at their own cost if necessary. The installation and storage conditions should be heeded.

15. PLACE OF JURISDICTION AND APPLICABLE LAW

15.1 Unless agreed otherwise the legal requirements that are applicable between registered traders apply.

15.2 The place of jurisdiction of the court specifically responsible for A-4020 Linz is agreed for all disputes arising from a contractual relationship entered into with the contractor.

15.3 Austrian substantive law applies. The applicability of the Uniform Law on the International Sale of goods is excluded.

15.4 The court in whose administrative district the consumer has their domicile, usually resides or where their business is located is responsible for all suits filed against a consumer who has their domicile, usually resides or whose business is located in the home country.

16. DISTANCE SELLING TRANSACTION

16.1 "Distance selling" is a contract that has been concluded without the simultaneous physical presence of the contractual partners, for example by way of order forms, advertisements, phone, fax, Internet, etc. and involves a consumer transaction.

16.2 A distance selling transaction with the customer is only valid if the contractor has confirmed the order in writing by disclosing the company name, company address and the essential features of the goods, price and delivery costs.

16.3 If the customer is the user they can withdraw from a contract concluded in distance selling within seven days; Saturday does not count as a working day. The term is three months if the contractor has not discharged their information obligations in accordance with Item 16.2.

16.4 Goods which have been produced according to customer specifications, audio or video recordings or software that has been unsealed by the customer are explicitly excluded from the consumer's right of withdrawal in a distance selling transaction, as are services which, in accordance with the agreement, started within seven working days of conclusion of the contract, newspapers, journals and magazines, with the exception of contracts relating to periodical documents. The contracts listed in § 5b KSchG (Employment Protection Act) are also exempt.

16.5 Otherwise the relevant requirements of the Consumer Protection Law apply to distance selling transactions.

17. FINAL CLAUSES

17.1 The above provisions apply to sales to consumers within the meaning of the Consumer Protection Law only insofar as the Consumer Protection Law does not provide other mandatory provisions.

17.2 The customer must inform the contractor immediately of changes to their address.

17.3 If individual provisions of these Terms and Conditions are or become invalid or ineffective, the validity of the remaining provisions is not affected hereby.