

General Terms and Conditions

Timewarp IT Consulting GmbH
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1. Scope

These General Terms and Conditions apply to all business transactions between the company TIME-WARP IT Consulting GmbH, hereinafter “the Contractor” or “the Vendor”, and the Customer, hereinafter also referred to as “Client”, “Purchaser” or “User”, unless agreed otherwise in writing.

2. Scope of contract and validity

All orders and agreements are legally binding only once they have been signed in writing by an authorised representative of the Contractor, and they set obligations only within the scope specified in the order confirmation. Purchasing terms and conditions of the Client are excluded for the purposes both of the relevant legal transaction and of the entire business relationship. Offers are fundamentally non-binding.

3. Service object

The object of an order may be:

- a) general consulting and project management for organisation, information technology or information systems
- b) delivery and installation of hardware
- c) delivery and installation of standardised programs
- d) development, delivery and installation of custom programs
- e) acquisition of rights to use software products and of usufructuary rights
- f) support and service for information systems
- g) basic training or other services

a) General consulting for Organisation, Information Technology or Information Systems

The Client undertakes to present in detail all the organisational, operational and technical information necessary for the order and to provide it in a timely manner.

b) Delivery and installation of hardware

The Purchaser will conclude separate purchasing contracts for hardware products. The Purchaser is obliged to provide the Vendor with a detailed account of his/her operational situation and of the expected solution that he/she envisages will be provided by the installation of the purchased item. The Vendor is obliged to install the hardware products on time, properly and expertly and to make them ready for use, provided that installation and preparation for use are part of the contract. Once the acceptance test has been passed, the delivery is deemed to have been completed. It is the Vendor's responsibility to ensure that the devices delivered are defect-free and that services to be provided are performed faultlessly. The Purchaser is entitled to cancel the purchase or pay a reduced price (at his/her own discretion) only after at least two failed attempts to remedy the defect(s). As soon as it has received the Purchaser's first notice of defects, the Vendor has the right to satisfy the Purchaser by replacing the defective devices or parts thereof with devices or parts of the same type. Any claim under guarantee that the Purchaser may have is rendered void if he/she personally, his/her employees or third parties carry out work, or order work to be carried out, on the devices, the software delivered with the latter by the Vendor or parts thereof before the expiry of an appropriate deadline set for the Vendor. The guarantee is also voided if the Purchaser unprofessionally allows alterations or additions to be made to the devices or parts thereof through the installation of accessories. Furthermore, the Vendor cannot be held responsible if any damage is caused by improper use that runs contrary to the instructions and guidance provided in the basic training, or if the Purchaser changes the installation location of the devices in such a way that the new installation location does not correspond to the principles of the purchasing contract. In addition, the guarantee claim is rendered void if the purchased item is, or parts thereof are, sold on to a third party within the guarantee period, without the Vendor being notified in advance. Once the Purchaser has notified the Vendor of its intention to sell, the Vendor is entitled to declare the relevant guarantee obligation void, if the guarantee obligation would be rendered unreasonably problematic for the Vendor by this resale. This is the case if the resale is carried out under circumstances or conditions that encumber the Vendor to an unusual extent or are illegal in any case.

c) Delivery and installation of Standardised or Custom Programs

1. Standard software

When ordering standard programs, the Purchaser confirms by making the order that he/she is aware of the scope of performance of the programs ordered. The Customer receives the non-transferable, non-exclusive and personal right to use the software in compliance with contractual specifications at a specific location.

The only rights of the Vendor that are transferred are those that may be transferred by the latter pursuant to their agreement with the respective supplier. Unless anything else is specifically agreed, the products delivered can only be used simultaneously at one workstation. Backup copies can be made. Otherwise, the Customer is not entitled, in particular, to copy, alter, trace back to its source code, use on hardware other than that agreed or make accessible to third parties the software or any parts thereof without prior authorisation. For backup copies or adjustments that are significant for the operation of the software, any guarantee, training or loading of software is excluded. In the case of software created by a third party, the Customer is also liable to the third party for compliance with copyright terms and conditions and terms and conditions of use.

2. Custom software

Custom software is created in the manner and within the scope specified in the binding information, documents and resources provided in full by the Customer. The Customer is also obliged to provide the Contractor, in a timely manner, with practical test data and sufficient testing opportunities, during normal working hours and free of charge. The Customer is obliged to save true data on the system on which the tests take place. After analysis of the IT issue, the Supplier will suggest a solution for which a fee to be arranged separately is payable. The Vendor will compile a functional specifications document in which the mutual expectations must be recorded. This must be reviewed for accuracy and completeness and confirmed in writing by the Customer. If the Customer wishes to make changes later, this may result in deadline and pricing changes. If, in the course of the work to produce the custom software, it transpires that the fulfilment of the order is impossible either in fact or legally, the Supplier is obliged to inform the Customer of this immediately. In such a case, both parties to the contract are entitled to terminate the contract, in which case the Contractor must be reimbursed by the Customer for the expenses incurred up to that point. The Contractor's software runs on all hardware types listed in the MS Hardware Compatibility List, and on the operating systems, MS Windows 2000/MS Windows XP/MS Windows 2003/MS Windows Vista/MS Windows 2008.

4. Prices, Payment, Taxes and Fees

All prices are in euros and do not include VAT, unless otherwise stated. They apply only to the present order. The fee notes and invoices issued by the Contractor, including VAT, must be paid promptly upon receipt of the invoice without any delay and free of charge. The payment terms and conditions set for the whole order also apply to partial invoices. For orders comprising several units, the Contractor is entitled to make partial deliveries and to invoice after delivery of each individual item or after performance of each individual service. Compliance with the agreed payment deadlines constitutes a significant condition for the Contractor to perform the delivery and fulfil the contract. Non-performance of the agreed payments entitles the Contractor to stop ongoing work and terminate the contract. All associated expenses and loss of profit must be borne by the Client. In the event of arrears, it is agreed that annual interest on arrears of 12% will be incurred. For payment in instalments, in the event of non-payment of two instalments, the Contractor is entitled to treat this as default.

The Client has no right to withhold payment on grounds of incomplete delivery of the whole order, warranty or guarantee claims or claims of defects. Any contractual fees are invoiced separately. In the event of default, the Client undertakes to pay the operating costs of the Credit Protection Association of 1870.

5. Delivery

The Contractor will endeavour to meet the agreed deadlines as exactly as possible. The intended deadlines for fulfilment can be fulfilled only if the Client provides the Contractor with all the necessary work and documents in full and fulfils his/her duty of cooperation to the necessary extent within the deadlines specified by the Contractor. Delayed deliveries or increased costs that result from the provision of inaccurate, incomplete or subsequently altered details, information and documents are not the responsibility of the Contractor and cannot justify delayed payments on the part of the Contractor. The Client will bear any resulting additional expenses.

6. Retention of Title

Until the agreed purchase price has been paid in full, the purchased item remains the property of the Vendor/Contractor. The retention of title will expire only once all the payments owed by the Purchaser to the Vendor pursuant to the present contract, including any interest and interest on arrears, have been made. For hardware purchases, the Purchaser is under obligation neither to sell on nor to encumber the devices to be purchased, including accessories and components, until the retention of title has expired. Alterations involving additional components can be made only if they represent an objective increase in the market value, and provided that they do not remain the property of third parties. They will be included in the Vendor's retention of title. However, this restriction applies only to changes that are not mere additions to the purchased item that can be removed at any time by simply disconnecting them and thus restoring the purchased item to its original state. If, whilst the retention of title remains in force, the purchased item is executively seized, or its legal status is otherwise changed, the Purchaser is obliged to notify the Vendor of this immediately; the same applies to a change in value arising from wear and tear which would normally be beyond the Purchaser's control. As regards software, the Purchaser's right to further use of the software expires as soon as the Supplier asserts retention of title. All copies of the program that the Purchaser has made must be deleted immediately.

7. Copyright and Use

All copyright to the agreed services is retained by the Contractor or the latter's licensor. After payment of the agreed fee, the Client receives the right to use the software exclusively for his/her own purposes, and only for the hardware specified in the contract and within the scope of the number of licences acquired for simultaneous use at several workstations. The Customer receives a usufructuary right. Pursuant to copyright law, distribution by the Customer is prohibited.

The Client's cooperation in the manufacture of the software does not mean that it acquires any rights beyond the use specified in the relevant contract. The creation of copies for archiving and backup purposes is permitted, provided that this is not expressly prohibited by the licensor or third parties in the software, and that all copyright and property notices are preserved unchanged in these copies. If the disclosure of interfaces is necessary in order to achieve the interoperability of the relevant software, this must be ordered by the Client. If the Contractor does not fulfil this requirement, and decompilation takes place pursuant to copyright law, the results must be used exclusively to achieve interoperability. Any misuse will be subject to compensation for damages. As regards software deliveries, it must be noted that the User can copy the program only for his/her own purposes and insofar as this is necessary for the use of the program. This is the case only for the installation of the program on the mass storage unit of the hardware used, or for loading the program in the working memory. In addition, the User is entitled to make copies for backup purposes. However, only one single backup copy per item of software can be created and stored. This backup copy must be clearly labelled as a copy of the surrendered program. The User must take appropriate precautions to prevent unauthorised third-party access to the program or the latter's documentation. The original data carrier and the backup copies must be stored in a location protected against unauthorised third-party access. Furthermore, the right is reserved to deliver the software provided to other customers, either in whole or in part.

8. Decompilation

Pursuant to § 40e UrhG (Copyright Act), the code of a computer program can be copied and its code form can be translated, provided that the following conditions are fulfilled: the actions are essential in order to obtain the information necessary in order to render an independently created computer program interoperable with other computer programs; the actions are performed by a person authorised to use a copy of a program, or on the latter's behalf by a person authorised to do so; the information necessary in order to achieve interoperability has not been made readily available to the persons listed above; the actions are restricted to the parts of the program that are necessary in order to achieve interoperability; the information subsequently gained must not be used for purposes other than achieving the interoperability of the independently created program, and must not be passed on to third parties, unless this is necessary for the interoperability of the independently created program, or used for the development, reproduction or distribution of a program with a significantly similar form of expression, or for any other copyright-infringing actions. Copyright notices, serial numbers and all other characteristics that serve to identify the program or software package must under no circumstances be removed or changed.

9. Right of Termination

In the event that the Contractor fails to meet an agreed delivery deadline because of its own fault or illegal actions, the Client is entitled to cancel the relevant order by registered letter, provided that significant components of the agreed service have still not been provided after the expiry of a reasonable grace period, and the Client is in no way responsible for this.

In cases of force majeure, labour disputes, natural disasters, transport stoppages and other events outside the Contractor's control, the Contractor is released from its delivery obligation and is permitted to change the agreed delivery deadline. If, as a result of such circumstances, delivery is delayed by more than 3 months, the Customer is entitled to terminate the contract, subject to a further 14-day grace period, and to the exclusion of all further claims. Cancellation by the Client is possible only with the Contractor's written consent. If the Contractor accepts a cancellation, as well as being entitled to charge for services provided and expenses incurred so far, it is also entitled to charge a cancellation fee amounting to 30% of the proportion of the entire project's order value that has not yet been invoiced.

10. Guarantee

The Customer is obliged to check the item(s) delivered for defects immediately and to report any defects without delay, otherwise he/she will lose his/her claims. Notices of defects are valid only if they concern reproducible defects. If the notice of defects is justified, the defect(s) will be remedied within a reasonable time limit; to this end, the Client will enable the Contractor to take all necessary steps to investigate and remedy the defect(s). Assistance and the remedying of any defects and malfunctions which the Client is liable to pay for, as well as any other adjustments, alterations and additions, will be carried out and charged for by the Contractor. This also applies to the remedying of defects when program changes, additions or other interventions are carried out by the Client him/herself or third parties. Furthermore, the Contractor accepts no liability for defects, malfunctions or damage attributable to improper use, altered operating system components, interfaces and parameters, the use of inappropriate organisational resources and data carriers (inasmuch as these are prescribed), abnormal operating conditions or damage in transit. If a program is subsequently changed by one of the Client's own programmers or by third parties, any guarantee provided by the Contractor for this program is rendered void. If the object of an order is the alteration of or addition to existing programs, the guarantee refers to the alteration or addition. Thus the guarantee for the original program is no longer valid. Unless any other period is agreed, the guarantee period is six months. The right to demand a price reduction is excluded by mutual agreement, unless more than three attempts at improvement/subsequent remedies by the Contractor or Supplier have failed. The Contractor accepts no liability for loss of data.

11. Compensation for Damage

The Contractor is liable for damages in cases of proven wilfulness or gross negligence, within the framework of the statutory provisions. Liability for minor negligence is excluded. Compensation for consequential damage, financial losses, damage to recorded data, savings not made, interest losses and damage arising from third-party claims against the Contractor is absolutely excluded, insofar as this is legally permissible.

12. Faithfulness

The contractual partners undertake to behave faithfully towards each other. For the duration of the contract and for twelve months thereafter, each partner will refrain from headhunting or employing, even via third parties, any employees involved in the realisation of the other contractual partner's orders. If either of the contractual partners violates this undertaking, the violating partner must pay the other partner a compensation sum amounting to one year's salary for the relevant employee.

13. Data Protection, Confidentiality

The Contractor obliges its employees to comply with the provisions of §20 of the Data Protection Act (Data Confidentiality) [Datenschutzgesetz (Datengeheimnis)].

14. Source Code

Unless anything to the contrary is agreed, the source code is not included in the scope of service. If, in individual cases, it is agreed that the source code will be transferred, this does not entitle the Customer to make alterations or additions to the work results and software products. A copy of the source code will be deposited with a notary public, who will be obliged to release the source code to the Customer once specific conditions, which must be agreed, are met.

15. Notes

The Customer confirms that he/she is aware of the valid legal provisions relating to electronic data processing. He/she knows that he/she may possibly need a DVR (Data Processing Register) number to undertake data processing and must, at all events, comply with the Employee Protection Provisions (Arbeitnehmerschutzvorschriften), and that, under certain circumstances, pursuant to the Foreign Trade Act (Außenhandelsgesetz), it may not be possible to re-export the products that we deliver without the permission of the Ministry of Trade (Handelsministerium).

16. Other Terms and Conditions

If specific terms and conditions of this contract are or become invalid, this will not affect the rest of this contract. The contractual partners will work together to find a provision as similar as possible to the invalid terms and conditions.

17. Concluding Terms and Conditions

Unless otherwise agreed or prohibited by law, only the statutory provisions in Austrian law for relations between registered merchants (Vollkaufleute) are applicable, even if the order is carried out abroad. For any disputes that may arise, it is agreed that the only competent court of jurisdiction is the competent court for the Contractor's registered office. For sales to consumers within the meaning of the Consumer Protection Act (Konsumentenschutzgesetz), the terms and conditions above are valid only insofar as they are compatible with the compulsory provisions of the Consumer Protection Act.