

**General Terms and Conditions
for the sale and delivery of organisation, programming
services and work usage licences for software products
(B2B)**

2024 version

**Association of Management Consulting,
Accounting and Information Technology**

Wiedner Hauptstraße 63
A-1045 Vienna
T: +43-(0)-590900-4908
E-mail: ubit@wko.at
<http://www.ubit.at>

1. Scope and validity of the contract

1.1. All contracts and agreements shall only be legally binding if they are signed by the Contractor in writing in company-style and are only binding to the extent specified in the order confirmation. The Client's purchase terms and conditions are hereby excluded for the legal transaction in question and the entire business relationship. Quotes are generally non-binding .

2. Performance and testing

2.1. Qutoes can be made for the following services:

- Development of organisational concepts
- Global and detailed analyses
- Creation of individual programmes
- Delivery of library (standard) programmes
- Acquisition of user authorisations for software products
- Acquisition of work usage licences
- Assistance with commissioning (changeover support)
- Consulting services over the phone
- Programme maintenance
- Creation of programme carriers
- Other services

2.2. The development of individual organisational concepts and programs (used as synonyms wherever these GTC refer to software) shall be carried out in accordance with the type and scope of the binding information, documents and aids provided in full by the Client. This also includes practical testing data as well as sufficient testing facilities provided by the Client in good time, during normal working hours and at its own expense. If the Client already uses the system provided for testing purposes for real-life operation, the Client shall be responsible for securing the live data.

2.3. The basis for the creation of customised programmes is the written service description which the Contractor prepares or the Client provides against cost calculation on the basis of the documents and information made available to it. This service description must be checked by the Client for correctness and completeness, and must be endorsed by the Client. Subsequent requests for changes may lead to separate deadline and price agreements.

2.4. Individually created software or programme adaptations require programme acceptance by the Client for the respective programme package concerned no later than four weeks after delivery. This shall be confirmed by the Client in a protocol. (Check for correctness and completeness based on the service description accepted by the Contractor using the test data provided under point 2.2). If the Client allows the period of four weeks to elapse without programme acceptance, the software delivered shall be deemed accepted as of the end date of the aforementioned period. Any software used by the Client in live operation shall in any case be deemed accepted.

Any defects that occur, i.e. deviations from the service description previously agreed in writing, must be reported with sufficient documentation by the Client to the Contractor, who shall endeavour to rectify any defects as quickly as possible. If significant defects are reported in writing, i.e. if live operation cannot be commenced or continued, renewed acceptance is required once the defects have been rectified.

The Client is not entitled to refuse any acceptance of software due to minor defects.

- 2.5. When ordering library (standard) programmes, the Client confirms upon order that it is aware of the scope of performance of the programmes ordered.
- 2.6. Should it become apparent during operations that it is factually or legally impossible to execute the contract as specified in the service description, the Contractor shall notify the Client to this effect without delay. Failure by the Client to amend the service description to this effect or to create conditions that make execution possible, the Contractor may refuse execution. If the contract cannot be executed as a consequence of a failure on the part of the Client or a subsequent change to the service description by the Client, the Contractor shall be entitled to withdraw from the contract. The costs and expenses incurred up to that point for the Contractor's activities as well as any dismantling costs shall be reimbursed by the Client.
- 2.7. Programme carriers, documentation and service descriptions shall be sent at the Client's expense and risk. Any additional training and explanations requested by the Client shall be invoiced separately. Insurance shall only be taken out at the Client's request.
- 2.8. We expressly point out that a barrier-free design (in particular of websites), in particular as specified the Federal Act on the Equality of Persons with Disabilities (Federal Disability Equality Act - BGStG), the Federal Act on Barrier-free Access to Websites and Mobile Applications of the Federal Government (Web Accessibility Act - WZG) or of the Federal Act on Accessibility Requirements for Products and Services (Accessibility Act - BaFG), which comes into force on 28 June 2025, is not included in the offer, unless this was requested separately/individually by the Client. If the barrier-free design has not been agreed, the Client shall be responsible for checking the admissibility of the service with regard to the relevant statutory provisions. The Client must also check the content provided by it for its legal admissibility, in particular under competition, trademark, copyright and administrative law. In the event of slight negligence or after fulfilment of any duty to warn the customer, the Contractor shall not be liable for the legal admissibility of content if this was provided by the customer.
- 2.9. Programme documentation shall only be created and handed over to the Client if this has been expressly agreed. The same applies to the handover of the source code. In any case, handover is subject to full payment.
- 2.10. Any system passwords for services created individually for the Client shall only be disclosed to the Client if a) no maintenance or support order exists for the

component affected by the system password (any more), b) all of the Client's payment obligations towards the Contractor have been fulfilled, c) the Contractor requires the password in order to use, adapt or further develop the service in accordance with the purpose of the contract, and d) the Client waives its warranty towards the Contractor.

3. Prices, taxes and fees

- 3.1.** All prices are in euros excluding VAT. They only apply to the present order. The prices quoted are ex the Contractor's registered office or place of business. The costs of programme carriers (e.g. memory sticks, DVDs, CDs, magnetic tapes, magnetic discs, floppy discs, streamer tapes, magnetic tape cassettes, etc.) and any contract fees shall be invoiced separately.
- 3.2.** For library (standard) programmes, the list prices valid on the day of delivery shall apply. For all other services (organisational consulting, programming, training, conversion support, telephone consulting, etc.), the workload shall be charged at the rates valid on the day the service is provided. Deviations from scheduled hours as a basis for the contract price outside the Contractor's responsibility shall be invoiced based on the actual times.
- 3.3.** The costs for travelling, daily and overnight allowances shall be invoiced separately to the Client in accordance with the applicable rates (e.g. collective agreements). If no such rates exist, the actual costs incurred (which must be proven) shall be reimbursed. Travelling time is considered working time.

4. Delivery date

- 4.1.** The Contractor shall endeavour to meet the agreed deadlines for fulfilment (completion) as precisely as possible.
- 4.2.** The targeted fulfilment deadlines can only be met if the Client provides all necessary work and documents in full by the deadlines specified by the Contractor, in particular the service description accepted by it in accordance with point 2.3, and fulfils its obligation to cooperate to the extent required. Delays in delivery and cost increases caused by incorrect, incomplete or subsequently changed details and information or documents provided are not the responsibility of the Contractor and cannot lead to default on the part of the Contractor. Any resulting additional costs shall be borne by the Client.
- 4.3.** For orders comprising several units or programmes, the Contractor shall be entitled to make partial deliveries or issue partial invoices.

5. Payment

- 5.1.** Invoices issued by the Contractor, including VAT, are payable within 14 days of receipt without any deductions and free of charges. The terms of payment stipulated for the entire order shall apply analogously to partial invoices.

5.2. In the case of orders comprising several units (e.g. programmes and/or training courses, implementation in partial steps), the Contractor shall be entitled to issue an invoice after delivery of each individual unit or service.

5.3. Compliance with the agreed payment dates is an essential condition for the performance of the delivery or fulfilment of the contract by the Contractor. Failure to comply with the agreed payments shall entitle the Contractor to suspend ongoing work and withdraw from the contract. All associated costs and loss of profit shall be borne by the Client. In the event of late payment, the statutory default interest for business transactions shall be charged. If two instalments of partial payments are not paid on time, the Contractor shall be entitled to enforce the loss of deadlines and to call in any acceptances handed over.

5.4. The Client is not authorised to withhold payments due to incomplete overall delivery, guarantee or warranty claims or complaints.

5.5. If, according to the order, physical items are (also) to be transferred to the ownership of the Client, these shall remain the property of the Contractor up to full satisfaction of all of the Contractor's claims.

6. Copyright and utilisation

6.1. Subject to Sections 6.2 and 6.4, the Contractor shall grant the Client a non-exclusive, non-transferable, non-sublicensable and perpetual right to use the software for the hardware specified in the contract and to the extent of the number of licences purchased for simultaneous use on several workstations, to use all work results created on the basis of the Contractor's contract for its own internal use. All other rights shall remain with the Contractor. The cooperation of the Client in the production of the software does not result in the acquisition of any rights beyond the use specified in this contract. There is no co-authorship of the Client. Any infringement of the Contractor's copyrights shall give rise to claims for compensation or damages, whereby full satisfaction shall be provided in such a case.

6.2. If, in the case of the creation of customised software, an exclusive, exclusive or equivalent right of use of the Client has been agreed, Section 40b of the Copyright Act shall apply mutatis mutandis. However, this shall not apply to those programme components that were created by independent third parties (i.e. persons who did not create the components as employees or Contractors of the Contractor) and were integrated into the software by the Contractor (in particular templates, programme libraries, etc. created by third parties). Rather, the respectively existing licence conditions are decisive in this respect.

6.3. The Client is permitted to make copies for archiving and data backup purposes on condition that all copyright and ownership notices are transferred unchanged to these copies.

6.4. Should the disclosure of the interfaces be necessary for the creation of interoperability of the software in question, this must be ordered from the Contractor by the Client against payment of costs. If the Contractor does not fulfil this requirement and decompilation is carried out in accordance with copyright law, the results are to be used exclusively to establish interoperability. Misuse shall result in compensation for damages.

6.5. If the Client is provided with software whose licence holder is a third party (e.g. standard software from Microsoft), the granting of the right of use shall be governed by the licence terms of the licence holder (manufacturer).

7. Right of cancellation

7.1. In the event that an agreed delivery time is exceeded due to the sole fault or unlawful action of the Contractor, the Client shall be entitled to withdraw from the relevant order by registered letter if the agreed service is not provided in essential parts even within the reasonable grace period and the Client is not at fault.

7.2. Force majeure, labour disputes, natural disasters and transport blocks as well as other circumstances beyond the Contractor's control shall release the Contractor from the delivery obligation or allow the Contractor to redetermine the agreed delivery time.

7.3. Cancellations by the Client are only possible with the written consent of the Contractor. If the Contractor agrees to a cancellation, it shall be entitled to charge a cancellation fee of 30% of the unbilled order value of the overall project in addition to the services rendered and costs incurred.

8. Warranty, maintenance, modifications

8.1. The Contractor warrants that the software fulfils the functions described in the associated documentation, provided that the software is used on the operating system described in the contract.

8.2.

8.2.1. Troubleshooting is subject to the following preconditions

- the Client notifies the Contractor of the error within the period (which may apply mutatis mutandis) set out in Section 377 UGB;
- the Client provides a sufficient description of the error in an error message which can be determined by the Contractor;
- the Client provides the Contractor with all the documents required to correct the error;
- the Client or a third party attributable to the Client has not tampered with the software;
- the software is operated under the intended operating conditions in accordance with the description;

8.2.2. In warranty cases, improvement shall in any case take precedence over price reduction or a cancellation of the contract. In the event of a justified complaint, the defects shall be remedied within a reasonable period of time, with the Client providing the Contractor with the chance to take all measures necessary to investigate and remedy the defects.

The presumption of defectiveness according to § 924 ABGB is excluded.

8.2.3. Corrections and additions necessary before delivery of the agreed service due to organisational and technical programming deficiencies for which the Contractor is responsible shall be carried out by the Contractor free of charge.

8.3. Any costs for assistance, error diagnosis and error and fault correction in the Client's domain as well as other corrections, changes and additions shall be carried out by the Contractor against payment. This shall also apply to the correction of defects if programme changes, additions or other interventions have been made by the Client itself or by a third party.

8.4. Furthermore, the Contractor accepts no liability for errors, faults or damage caused by improper operation, modified operating system components, interfaces and parameters, use of unsuitable organisational means and data carriers, wherever prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) and transport damage.

8.5. The Contractor shall not provide any warranty for programmes that are subsequently modified by the Client's own programmers or third parties.

8.6. Wherever the contract is concluded to modify or supplement existing programmes, the warranty relates to the modification or supplementation. This does not revive the warranty for the original programme.

8.7. The warranty period is six (6) months from delivery. The Client's rights under the warranty and the claims arising therefrom shall in any case expire one (1) month after the end of the warranty period. Any possibility of defense against payment claims as in Section 933 (3) ABGB is ruled out.

8.8. The update obligation pursuant to Section 7 VGG in conjunction with Section 1 (3) VGG is excluded in its entirety, unless expressly agreed otherwise. With regard to updates, therefore, only the relevant agreements between the contracting parties shall apply.

9. Liability

9.1. The Contractor shall only be liable to the Client for damage for which it is demonstrably responsible in the event of gross negligence. This shall also apply mutatis mutandis to damage attributable to third parties engaged by the Contractor. The Contractor's liability shall be unlimited in all events of personal injury.

9.2. Liability for indirect damages - such as loss of profit, costs associated with business interruption, loss of data or third-party claims - is expressly excluded.

9.3. Damages claims shall be time-barred as specified by statutory provisions, but no later than one year after the damage and the damaging party become known.

9.4. If the Contractor uses third party services in its performance and warranty and/or liability claims arise against such third parties in this context, the Contractor shall assign these claims to the Client. In such a case, the Client shall give priority to these third parties.

9.5. If data backup is expressly agreed as a service, in deviation from point 9.2 liability for the loss of data shall not be excluded, but shall be limited to a maximum of 10% of the order amount per damage event, up to a maximum of EUR 15,000. Warranty claims and claims for damages of the Client's beyond those specified in this contract - regardless of the legal grounds - are excluded.

10. Loyalty

10.1. The contracting parties shall be loyal to each other. They shall refrain from canvassing and employing, including via third parties, employees of the other contracting party who have been employed in the realisation of the orders during the duration of the contract and for 12 months after the end of the contract. The contracting party in breach shall be obliged to pay liquidated damages in the amount of one year's salary of the employee.

11. Data protection

11.1. The Contractor shall oblige its employees to comply with the provisions of Section 6 of the Data Protection Act.

11.2. The data protection declaration within the meaning of Art. 13 and 14 GDPR is attached to the order.

12. Secrecy

12.1. Each contracting party warrants to the other that it will treat all trade secrets disclosed to it by the other party in connection with this contract and its performance as such and will not disclose them to any third parties unless they are generally known, or were already known to the recipient beforehand without any obligation of confidentiality, or are disclosed or made available to the recipient by a third party without any obligation of confidentiality, or were demonstrably developed independently by the recipient, or must be disclosed on the basis of a legally binding official or judicial decision.

12.2. The subcontractors associated with the Contractor shall not be deemed third parties wherever they are subject to a confidentiality obligation corresponding to the content of this point.

13. Final provisions

- 13.1. Unless otherwise agreed, the statutory provisions applicable between entrepreneurs shall apply exclusively in accordance with Austrian law, even if the order is carried out abroad. Any disputes shall be exclusively to the local jurisdiction of the court with subject-matter jurisdiction for the Contractor's registered office.
- 13.2. Should one or more provisions of this contract be or become invalid in whole or in part, this shall not affect the remaining content of this contract. The invalid or unenforceable provision shall be replaced by a valid provision that comes as close as possible to the invalid or unenforceable clause.

The Trade Association of Management Consulting, Accounting and Information Technology recommends the following mediation clause as a business-friendly means of dispute resolution:

In the event of disputes arising from this contract that cannot be settled by mutual agreement the contracting parties shall agree by mutual consent to consult registered mediators (ZivMediatG) specialising in commercial mediation and recorded in the list of the Ministry of Justice on the out-of-court settlement of the conflict. If no agreement is reached on the choice of business mediators or the content of the agreement, legal steps shall be initiated at the earliest one month from the date of the break-down of negotiations.

If no mediation is brought about or if mediation is cancelled, Austrian law shall govern any subsequent legal proceedings.

It is agreed that all necessary costs incurred from preceding mediation, in particular also expenses for any legal advisors employed, can be claimed agreed in court or arbitration proceedings as "pre-litigation costs".

Accompanying sheet to the General Terms and Conditions for the sale and delivery of organisation, programming services and work usage licences for software products (B2B)

2024 version

These GTC are merely to be understood as a model for the drafting of GTC. The provisions contained herein are suggestions that may be deviated from in individual cases. If deviating provisions are agreed in a specific contract, to avoid misunderstandings it is generally helpful to clearly indicate which provision of the GTC specifically amends the contractual agreement (e.g.: "this provision replaces point x. of the GTC"). The use of the template cannot substitute consulting by a legal advisor.

Please note as follows:

Validity

In principle, contractual agreements take precedence over the provisions contained in the GTC. In addition, the GTC shall only become part of the contract if this is (demonstrably) agreed - preferably in writing. At the same time (before conclusion of the contract), the GTC must be communicated to the client. Transmission of the GTC after conclusion of the contract on invoices, delivery notes or the like is generally ineffective. Disadvantageous, unusual and surprising clauses in the GTC, i.e. clauses that the client need not expect in view of the circumstances surrounding the contract and the appearance of the document, shall not become part of the contract unless the client has been expressly (demonstrably) informed of this. Traders who regularly use GTC must display the GTC on the premises used for customer traffic.

Data protection & confidentiality

The controller, the processor and their employees must keep confidential all personal data from data processing that has been entrusted to them or has become accessible to them exclusively on the basis of their professional employment, without prejudice to other statutory confidentiality obligations, unless there is a legally permissible reason for transferring the entrusted or accessible personal data (data secrecy). Employees must be informed of this and of any consequences of a breach.

It is recommended that data protection clauses be included in the DSE.

Care must be taken to ensure that any consents under data protection law are obtained properly and that information obligations are fulfilled in full and in good time. In addition,

an order processing contract must be concluded if data is processed for the customer as part of the order (which can be assumed in this sector). Samples and further details can be found at: www.wko.at/datenschutz or at www.ubit.at.

Please note: In accordance with the nature of the contract for work and services, the contractor is entitled to be represented by other independent third parties in the production of the work. This is to be distinguished from the utilisation of the contractor's own auxiliary persons (e.g. employees of the contractor).

In terms of data protection law, however, if you wish to pass on data to a sub-processor as part of the order, you must have agreed this transfer with the client. This is either regulated in the processor contract or in a separate agreement.

Accessibility Act BaFG

With the entry into force of the BaFG, the barrier-free design after 28 June 2025 will be included in the normally required characteristics of products and/or services that fall within the scope of the BaFG. Although service contracts already concluded before 28 June 2025 may continue unchanged until their expiry, even if they are not barrier-free, this transitional period ends on 28 June 2030. Until then, the contracting parties must either adapt their existing contracts to the accessibility requirements of the BaFG through amendments or terminate them.

Miscellaneous

The place of jurisdiction shall again be explicitly specified in the contractual agreement with the customer.

Note:

*We would like to point out that the masculine form is used on these pages for reasons of easier readability.
All statements equally apply to the female form.*