

1. Area of validity

(1) These Conditions of Purchase apply to supplies and services of all kinds related to information technological services (hereinafter referred to as: performances), for which their validity is expressly agreed, and these Conditions supplement the General Conditions for Purchase of itech partner GmbH ("itech").

(2) In relation to the agent's General Terms and Conditions ("GTC") our Conditions of Purchase apply exclusively; this sentence also applies if itech does not expressly object to the GTC or any other contractual conditions of the agent. Any of the agent's conditions of delivery opposed to or diverging from our contractual conditions are not acknowledged and are not applied unless itech expressly agreed to the same in writing in individual cases.

(3) The agent accepts these Conditions of Purchase by providing a quote, by confirming an order, by accepting or executing an order. This applies as far as itech communicated the Conditions of Purchase for information technological services in connection with a tender, a request or an order.

2. Quotes, orders and other declarations, certificates of origin; VAT certificates

(1) All offers and quotes are free of charge and non-binding for itech.

(2) Orders, agreements and other declarations of itech are only binding if the company provides or confirms the same in writing. The silence of itech regarding offers including any quotes provided electronically is not an acceptance of the offer.

(3) As far as not expressly agreed otherwise – all documents including the documentations must be generated in German.

(4) The agent will provide any certificates of origin requested by itech with all details required and he will make them available duly signed immediately. The same applies to VAT certificates for export and intra-community deliveries.

3. Scope of services, completion clause, place of fulfilment

(1) Information technological services in the sense of these conditions are all services including consultancy in connection with the development, drafting and practical introduction of computer programs and software applications, hardware, IT-networks, its operations, configuration and administration.

(2) The contractual agreements essentially consist of

- the order documents of itech,
- these "Conditions of Purchase for information technological services",
- the documentation guidelines, requirements and specifications of itech and
- the general guidelines and expert's standards applicable for the agreed services at the time of the conclusion of this contract.

The above-mentioned documents are significant in the given order.

(3) All of the agent's services must correspond to the contractual scope of services and in particular the significant features stated therein and must be suitable without restrictions for the operational duration of use and the contractually preconditioned purpose or, if that is not determined, for the usual purpose of use. The agent must provide the contractually owed services personally, independently and completely in accordance with the generally recognised codes of practice.

(4) All services must meet the generally recognised code of practice, development as well as generally prevailing requirements and standards. This is in particular in view of performance, ergonomics or man-machine-interface, usability in any hardware and software environment at the location of itech, where the service shall be used, compatibility at least with the standard software used as well as with all programs in use.

(5) If the agent realises that the scope of services of itech – a concept, other tasks or specifications – is objectively not executable, is defective or unclear he must notify itech immediately in writing with technical reasoning. The agent's service also includes to inform itech in due time and in detail if and as far as the scope of services requires changes to fulfil the contract.

(6) The place of fulfilment for the agent's services is the agreed point of use; for payment claims of the parties the administrative office of itech.

4. Prices

(1) The agreed prices and remuneration rates are fixed prices and include the regularly incurring travel costs and times, costs for material and use of the agent's testing facilities. They are quoted without Value Added Tax.

(2) The prices include everything, which the agent must undertake in order to fulfil his duty to perform at the agreed place of fulfilment. All services must be free to the agreed receiving office.

5. Accounting per time rate

(1) If the accounting of the services has been agreed as per time rate the agent is paid for the effective working hours worked and confirmed by the principal after deduction of break and set-up times; the duty to payment is, however, limited to the hours objectively required. Travelling times and costs are only paid as far as this has been expressly agreed. The smallest accounting unit is a begun quarter of an hour.

(2) The agent must report to the person responsible of itech before commencing work and after completion of the same.

(3) The work performance records must be recorded on the forms made available by itech and must be submitted to the respective representative of itech daily immediately after finishing the working times for countersigning. The order and commission numbers of itech, the services provided and the periods of work as well as first names and surnames and roles of all employees used must be listed on the work performance records.

6. Deviation from the contract

(1) Services deviating from the contract (changed or additional services) of the agent do not entitle him to additional payment, unless itech expressly agrees to the deviations in writing before the services are carried out.

(2) In the event of deviating services the agent must submit a supplementary offer on the basis of the prices agreed in the contract without request, immediately and before the services are carried out; thereby the deleted services of the contract must be considered. The supplementary offer must include all technical and economic consequences of the deviating services. Generating the supplementary offers is free of charge for itech.

(3) Service times or deadlines are only influenced by changes of the service if this has been expressly agreed in writing.

(4) If it is disputed between the agent and the itech whether a service is to be rated as an additional or changed service, it rests in with the agent to prove that the service in dispute is not included as such or in this form in the scope of the current contract. This also applies if the provision of the disputable service has been expressly ordered by itech.

(5) The right to carry out additional services personally or to commission the same to third parties is reserved.

7. Interruption of the execution of the contract

(1) In the event of a notification of the agent according to Clause 3 Para. 5 or a request of change of itech according to Clause 6 itech may demand the interruption of the execution of all or individual services at any time. If itech does not request the interruption and if the agent realises that the continuation of the works on the basis of the existing conditions would lead to unusable results he must notify itech immediately in writing.

(2) The contracting partners must conclude an adequate agreement regarding the consequences of an interruption.

(3) The execution periods agreed change according to the extent of the part of the service delayed due to the interruption, at most by the number of the working days for the execution of the contract due to the interruption.

8. Cooperation on the part of itech

(1) itech will make available to the agent all information and documents required for the execution of the contract and will make the decisions required for the execution of the contract at short notice.

(2) As far as project-related services must be carried out during the operating hours of itech, all required working rooms, computer time and programs are made available free of charge.

(3) The agent will request in writing and in detail the principal's compliance with his duty to cooperate as far as itech does not perform these obligations and the agent thereby finds himself impeded in the timely execution of his services.

9. Cooperation between the contracting partners

(1) The agent and itech each name a specialist person and representative, who are available as contact partners during the execution of the contract and who are authorised to make the required decisions or to bring those about immediately. Replacing these persons is only possible for important reasons; the contracting partner must be notified of the change immediately.

(2) itech is entitled to request insight into the execution of the services and the explanation of the work progress.

(3) Depending on kind and extent of the project the contracting partners will meet in regular intervals in order to determine the progress of the project and to discuss any open questions. Content and result of the meetings must be recorded in a protocol to be signed by both contracting partners.

(4) If in view of the agreed intermediate or completion dates the work progress is too little, if defects emerge on the services or if the assets of itech show unproportionate utilisation of the hardware in relation to the work progress the agent is obliged upon the request of itech to take remedial action immediately without additional costs for itech.

(5) The agent is obliged to notify itech of significant organisatory changes – e.g. the sale or surrender of operating parts, which are significant for the provision of the service or the loss of relevant employees – immediately and to provide a concept, which ensures the continuous provision of the service. Irrespective of this, for such a case itech has the right to cancel the contract with immediate effect.

10. The agent's employees, subcontractors

(1) The right of functional and disciplinary directive regarding the agent's employees rests with the agent. This also applies if project-related contractual services must be carried out in the operation of itech.

(2) If an employee commissioned by the agent with the execution of the contract must be replaced with another employee for reasons, which itech is not responsible for, the training period is at the agent's expenses.

(3) The agent may only commission subcontractors with the written consent of itech.

11. Works in the plant of itech; occupational safety and health, accident prevention, limitation of emissions, immission damages, fire prevention, factory security offices, charges

For works/stays in the plants/buildings of itech the agent is obliged to ensure the safety and health of employees and the protection of the environment and to comply with the laws, ordinances and regulations the transport of hazardous goods and regarding fire prevention including all instructions of the professional associations and the organisation of property

insurers, as far as they are relevant for the execution of the delivery/service. The respective valid building regulations, which the agent may request from the responsible representative of itech, regulate details.

12. Extraordinary right to cancellation in the event of deterioration of assets

If regarding the agent's assets an application for insolvency proceedings is filed or if there is enough evidence that the conditions for the application for insolvency proceedings are present or if there are not enough assets itech possesses the right of immediate, extraordinary cancellation with the exemption from the agent's claims for compensation.

13. Deadlines, impediments to services and disruptions

(1) The conditions and legal consequences of delay are assessed in accordance with the legal regulations with the proviso that exceeding the intermediate dates expressly named as "contractual terms" as well as exceeding the operating, total construction and acceptance dates are considered as delay unless the agent proves that he is not responsible for exceeding the times in individual cases.

(2) If the agent finds circumstances, which emerge to impede or disrupt the services or which could lead thereto, or if the agent believes, that such circumstances prevail, if he particularly realises that he may not meet service times or deadlines due to force majeure or other circumstances, which he is not responsible for, he must inform itech immediately in writing.

If he does not meet this obligation he cannot refer to such circumstances later, unless they were obvious to itech.

(3) Sunday and holiday work necessary to meet the deadlines require the official permission, which the agent must obtain.

(4) The consequences of delay are assessed according to the legal regulations. As far as itech is entitled to withdraw the withdrawal – as far as the delay is limited to a delimitable part of the service – may be limited to this part of the contract, whilst the remainder of the contract is maintained effective. For the remainder regarding withdrawal the provisions in Clause 17 apply accordingly.

(5) In order to allow for itech to obtain the service otherwise the agent is obliged, even after itech has executed its right of withdrawal, to surrender the drawn up plans, drawings, calculations, software documents, property rights, documentations and specifications required for the provision of the services owed before the withdrawal in return for adequate payment; insofar itech has got the right to choose. Furthermore, the agent is obliged, even after itech has executed its right of withdrawal, to provide information about the services provided by the agent to the extent required and free of charge.

14. Force majeure

(1) All events of force majeure entitle both contracting parties to delay the fulfilment of accepted duties or, if the execution of this contract becomes unreasonable entirely or in parts, they may withdraw from the contract insofar as the other party may not incur any claims for damages. Events of force majeure are all events, which happen unexpectedly and which were not culpably caused by neither of the parties, in particular: natural catastrophes, fire, lightning, explosion, poison or gas leakage, flooding, general disruptions to supplies, warlike, terrorist, tumultuous or similar influences, industrial actions in own or other companies as well as interventions from higher authorities.

(2) Serious disruptions to the operation, which cause a limitation to or discontinuation of the operation, and other circumstances, which significantly aggravate the fulfilment of obligations or which make that impossible, no matter, whether they happen with the one of the contracting partners or a third party, are considered like force majeure, however, only, if the contracting partners or the third party are not responsible for the same.

15. Property rights

(1) The agent is liable that his services and their contractual and purposeful use on the part of itech do not breach any property rights of third parties (e.g. patent pending and granted, copyrights). He is obliged to make the use of the contractual object possible for itech –, by satisfying the claims of a third party or by changing the contractual object

adequately where applicable. The change may not decrease the performance capability of the contractual object in any way.

(2) If the agent cannot make the use of the contractual object possible for itech, in particular because the third party insists on the discontinuation of the use and if the adequate change of the contractual object emerges as impossible the agent must remove at his expenses the contractual object with the return of the payment received plus 5% interest above the base interest rate in accordance with § 247 BGB (Civil Code). Further legal claims remain unaffected.

(3) If during the preparation and execution of the order patentable or registrable know-how emerges due to the processes, appliances or equipments offered and if itech has contributed to the emergence of such a know-how due to its contribution in negotiations, meetings, common trials, test runs and the like the agent and itech will appear together nationally and internationally as applicants for the submissions of applications for property rights. The obligations resulting from the Employee's Invention Act remain unaffected. The use of protective know-how is under consideration of the mutual and common interests respectively. If one of the applicants renounces his share of the object of the common application or the commonly obtained protective right the right of disposal is fully assigned to the co-applicant. In the event of use the obligations resulting from the Employee's Invention Act regarding the payments of the invention remunerations for the assigner must be satisfied by the assignee. The above provisions apply to non-protective technical know-how accordingly.

(4) Irrespective of any legal entitlements of itech the agent must release itech from all claims of third parties and from all damages, costs and other disadvantages itech may incur in this connection. This also includes disadvantages, which itech may incur due to the required changes of constructions, machines, equipments and computer equipments or programs and which are incurred due to the delays in the building, project or business process.

16. Proof of performance and acceptance

(1) In the event of the realisation of, change of or addition to programs the agent installs the completed programs on the agreed computer platform making it ready for operation and makes available to itech at that point in time all documents, including the orderly documentation, belonging to the contractual completion of his services.

(2) Subsequent to the operable installation there is a testing phase, during which the agent and itech together assess the conformity of the programs with the agreed specifications – in particular functionality and performance. The agent is obliged to make suitable employees available during the testing phase to an adequate extent of time and free of charge.

(3) The duration of the testing phase and the testing criteria are agreed in the contract. If during the execution of the contract changes to the services are agreed the testing criteria must be changed accordingly.

(4) The agent will immediately remove any errors emerging during the testing phase and will prove the result in the course of the testing.

(5) Unless otherwise agreed in the contract the agent's service must be formally ~~accepted~~ after the successful conclusion of the testing phase; the testing phase is successful once the programs correspond to the agreed specifications. The acceptance is a maturity condition for the agent's entitlement to payment for all contracts subject to ~~these~~ conditions. itech will accept the services at the place of fulfilment as soon as the agent applies for such an acceptance in writing after completion and as soon as all conditions for acceptance are met. The acceptance requires the mandatory drawing up of a record on the copy of itech, which must be signed by itech and the agent. A verbal acceptance or conclusive acceptance upon using the contractual object is excluded. In the event of authorisations or acceptances of partial services the entirety of the services is accepted by itech only with the final acceptance related to the contractual concurrence of all partial services.

(6) The acceptance is also particularly linked with the fulfilment of the significant features and significant service characteristics owed by the agent; it may be refused until significant defects are removed. itech has the same right in the event of missing operation and maintenance instructions or other information (e.g. documentations) to be provided to

acceptance according to the order until these are available free of defects and completely. As long as itech may refuse acceptance the statute of limitations for claims for defects does not commence.

(7) If the significant features are not achieved for reasons, for which the agent is responsible, he has the right to demand the repetition of the proof of performance and he has the duty to undertake immediately all steps required in order to improve the service so that the significant features and/or characteristics are met. If the proof of performance is, however, not provided within an adequate period, at most 3 months – from the contractually agreed time of the operating status – itech is entitled to assert the legal rights.

(8) If the proof of performance or other conditions necessary for the acceptance are not provided during the period of a more than 6 months, from the completion of the service, exclusively for reasons, which itech is responsible for (the agent must provide evidence) the service is considered accepted at the latest after the above-mentioned 6 months.

(9) The agent must immediately remove insignificant defects, which emerge upon acceptance. The successful removal of the defects must be documented and is the beginning of the statute of limitations for the same.

17. Defects

(1) The agent guarantees that his service is free of defects and complete at any rate and that it includes the significant features particularly agreed in the contract as such and that they are suitable for the planned purpose under operational conditions of use and that it meets relevant regulations and specialist standards. Defects, which can be ascribed to the service description or other specifications of itech, are not included in the agent's warranty obligation; this does not apply if the agent breaches his obligation to provide information in accordance with Clause 3 Para. 5.

(2) The statute of limitations for claims due to services not provided or not provided orderly is assessed according to the legal provisions. It commences with the final acceptance.

(3) In the event of defects as to quality and of title of the agent's services itech is entitled to the legal rights. itech is entitled to stipulate an adequate period for the supplementary service; the adequacy is assessed according to the operational issues of itech. Program errors, which in view of the impacts of the error cannot be removed within the adequate short period of time, must be provisionally removed by a bypass, which is reasonable for itech; the obligation to remove the error finally remains unaffected. The documentation must be corrected according to the removal of the error. In the event of unreasonableness itech is entitled to reject the supplementary service. Irrespective of the legally regulated cases such unreasonableness may also result in particular if the supplementary service leads or may lead to inadequate delay or uncertain success for equipment, devices or installations related to safety or the maintenance of the operation, production or the business of itech. The mutually agreed stipulation of the period of the supplementary service has got the same legal effect as the stipulation of a period on the part of itech. itech will support the agent in the process of removing the defects by providing all documents and information required for the analysis of the defect.

(4) As far as in accordance with legal or contractual regulations itech is entitled to withdraw in the event of non-fulfilment or not orderly fulfilled performance the withdrawal from the contract – as far as the non-fulfilment or bad fulfilment is limited to a delimitable part of the performance – may be limited to this part of the contract, whilst the remainder of the contract is maintained effective.

(5) After the execution of the right to withdraw due to non-fulfilment or the not orderly fulfilment of the performance as well as in the event of entitlement to compensation instead of the performance, if the performance or the remainder of the performance must be commissioned otherwise, irrespective of legal rights itech is entitled to advance payment of an adequate amount due to the costs to be expected plus the safety premium of 50% per cent. In such an event itech is only obliged to obtain several quotes insofar as no significant delays in time or disruptions to the operation, production or business processes occur or threaten to occur. After execution of the right to withdraw, itech is entitled to the option to continue to use the service object at its own risk in return for adequate royalty to the operating status of a replacement facility.

(6) For defects as to quality irrespective of the legal entitlements for contracts of purchase, work and materials itech is entitled according to § 637 BGB (Civil Code) to carry out the changes ourselves and we are entitled to advance of money after the fruitless expiry of a period stipulated for the supplementary performance. Regarding the advance payment Clause 17 Para. 5 applies accordingly.

(7) If a defect as to quality appears within six months from the transfer of the risk it is assumed that the object was already defective at the time of the transfer of the risk, unless this assumption is contradictory to the kind of the object or the defect. Any warranty obligations by special agreements remain unaffected.

(8) With the removal of the defects the statute of limitations for claims for defects recommences for the amended parts of the service; this also applies to such parts, which are functionally connected with the parts included in the removal of defects and where damaging influences due to this service cannot be excluded.

(9) For all service components, which cannot be used as agreed in the contract due to operation discontinuations caused by the works to remove defects, the expiry of the statute of limitations is arrested for the duration of the discontinuation.

(10) So far as the inspection of the performance and the notice of defects according to § 377 Para. 1 HGB (Code of Commercial Law) reside with us we may do so within two weeks from delivery to fulfil the same in due time; the notice of a defect, which appears at a later point in time only, is carried out in due time according to § 377 Para. 3 HGB (Code of Commercial Law) within two weeks of its appearance.

18. Data protection

The agent may only use persons for the execution of the contractual service, whom he has subjected to the BDSG (Federal Data Protection Act) regarding the data secrecy. He must ensure that all persons, whom he commissioned with the processing or execution of the contract, comply with the regulations of the BDSG (Federal Data Protection Act). The agent must guarantee the data protection measures required according to the BDSG (Federal Data Protection Act) and upon request will make available to itech the information and evidence required for the order control in accordance with the BDSG (Federal Data Protection Act). itech is entitled to audit the data protection measures undertaken by the agent and to audit the compliance with the regulations of the BDSG (Federal Data Protection Act) on the agent's premises.

19. Non-disclosure

(1) The agent and the performing and vicarious agents working for him (such as employees and subcontractors) must keep secret any documents, no matter of which kind and origin, of which they gain knowledge. The same applies for all other operational methods and figures, models, drawings, sketches, images and other information, for which itech is interest not to be disclosed for their nature, and about which the agent and the performing and vicarious agents working for him gain knowledge in connection with the execution of the order. Without the prior written consent of itech the information mentioned in sentences 1 and 2 may not be published, copied, made available to third parties or used for any purpose other than the originally planned purpose.

(2) The agent must subject the performing and vicarious agents working for him to the above obligations.

(3) The secrecy obligation also continues after the termination of the contract.

(4) The secrecy obligation does not apply regarding such information, which

- is generally known or
- which the agent became aware of through a third party without breaching the secrecy obligation.

(5) As far as the agent obtains or stores information subject to the secrecy obligation he must protect the same against unauthorised access like personal data in accordance with the BDSG (Federal Data Protection Act).

(6) The agent must subject his employees and other persons, who he commissions to fulfil his contractual duties, to the secrecy obligation according to the above provisions and he must ensure that this obligation is complied with.

20. Backup of data

The agent must continually save services, which are compiled electronically, in partial results corresponding to the progressing project and under consideration of the program environment required for this. The backup copies must be outhoused and stored professionally.

21. Documents and programs of itech

(1) Documents of all kinds, including programs, surrendered to the agent by itech remain the property of itech. Copies may only be made for the execution of the contract. The originals and copies must be carefully stored for itech and must be returned after the execution of the contract.

(2) The agent may only use the programs surrendered by itech to the extent required for the execution of the contract.

22. Right of use

(1) itech acquires the irrevocable, exclusive, timely and spatially unlimited, right of use covering all known kinds of use, including the right of granting simple rights of use to third parties for the programs or parts of programs developed for itech as well as for all other service results, as far as there are no limitations resulting from the following paragraphs.

(2) If any rights of third parties for the third-party programs or other third-party service results are opposed to the acquisition of the right of use according to the above paragraph the scope of the right of use for itech must be agreed accordingly in the contract.

(3) The agent continues to be entitled to use standard programs, program modules, tools, which are used for the development of the service results, and the know-how, which he contributed, even for orders of third parties. The agent is not permitted to copy, process or use in another way the service results and solutions developed for itech, in full or in parts.

(4) The agent may only publish service results of all kinds – also in parts – that are developed for itech with the prior written consent of itech.

23. Program code

(1) Programs are surrendered to itech in a machine-readable code.

(2) Programs, which are developed individually for itech, must also be surrendered in their unencrypted source code with the manufacturer's documentation. Copies of the source code and the manufacturer's documentation must be handed over to itech upon acceptance and must correspond to the program status upon conclusion of the testing phase.

(3) The agent must record measures undertaken on the programs within the scope of the warranty immediately in the source code; a copy of the respective updated status must be sent to itech immediately.

(4) The agent's intellectual property right remains unaffected. itech's right of use of the source code including the documentation is limited to measures for the removal of errors, to the maintenance, change and extension of the programs.

24. Invoicing

(1) An invoice with the completed proof of performance must be made out for each order including any possible supplementary orders. This includes the acceptance declaration and, where applicable, the time sheets countersigned by itech.

(2) The invoice must meet the requirements of the Value Added Tax law and giving the order number it must itemise the services provided clearly, openly and comprehensibly.

25. Payment

(1) The agent must request the respective amounts of agreed payments. Payments do not signify the acknowledgement of the correctness of the invoice and/or the conformity of the services with the contract, but are with the proviso of the subsequent auditing.

(2) Unless agreed otherwise, in the event of delayed payments of itech the annual interest rate of 5% above the base rate applies in accordance with § 247 BGB (Civil Code). itech may choose to pay by bank transfer or cheque.

(3) itech is entitled to offset with all claims, which itech is due against the agent and to offset against all claims, which the agent is due against itech, no matter for which legal reasons. This also applies if cash payments from the one party and for processing payments in bills of exchange or other services from the other party were agreed. Where appropriate, these agreements only apply to the balance. If the claims are due differently, the offset is via value.

26. Contractual transfer/change of company status; assignment

(1) The agent must notify itech immediately of any contractual transfers and each and every change of the company status brought about by act of law.

(2) The transfer of the contract or of part of the same to a third party requires the prior written consent of CONVENTION AG, to which there is no legal entitlement.

(3) The assignment of the agent's claims against itech to third parties requires the written consent of itech, to which there is no legal entitlement.

(4) Herewith itech agrees to assignments, which occur due to the prolonged retention of title, with the proviso that it reserves all rights against the recipient of the assignment, which without this assignment it would be entitled to against the agent.

27. Subcontractors; liability for subcontractors and suppliers

(1) The agent personally must provide the contractual services. The commissioning of subcontractors requires the prior written consent of itech, to which there is no legal entitlement.

(2) The agent is liable for subcontractors and suppliers as for his own guiltiness.

28. Interest on payment claims against the agent

Payment claims against the agent are interest-bearing with the same interest rate agreed for the event of the delayed payments of itech.

29. Offsetting and retention on the part of the agent

(1) The agent may only offset with undisputed or legally acknowledged claims.

(2) He is only entitled to rights of retention insofar as they are based on the same contractual relationship.

(3) In the event of disputes about additional or changed services the agent is not entitled to a right of retention or any other right of service refusal.

30. Partial invalidity

Should individual provisions of these conditions be ineffective in their entirety or in parts the remainder of the conditions shall remain fully valid.

31. Application of German Law

Under exemption from international law the law at the headquarters of itech significant for the legal relationships of national parties applies to all legal relationships between itech and the agent.

The common United Nations Convention on Contracts for the International Sale of Goods does not apply.

32. Place of jurisdiction

The place of jurisdiction is for both parties the District Court or County Court responsible at the itech's head office; additionally itech is entitled to choose the agent's general place of jurisdiction.

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