

ORDAT

Conditions of Contract for Service Agreements

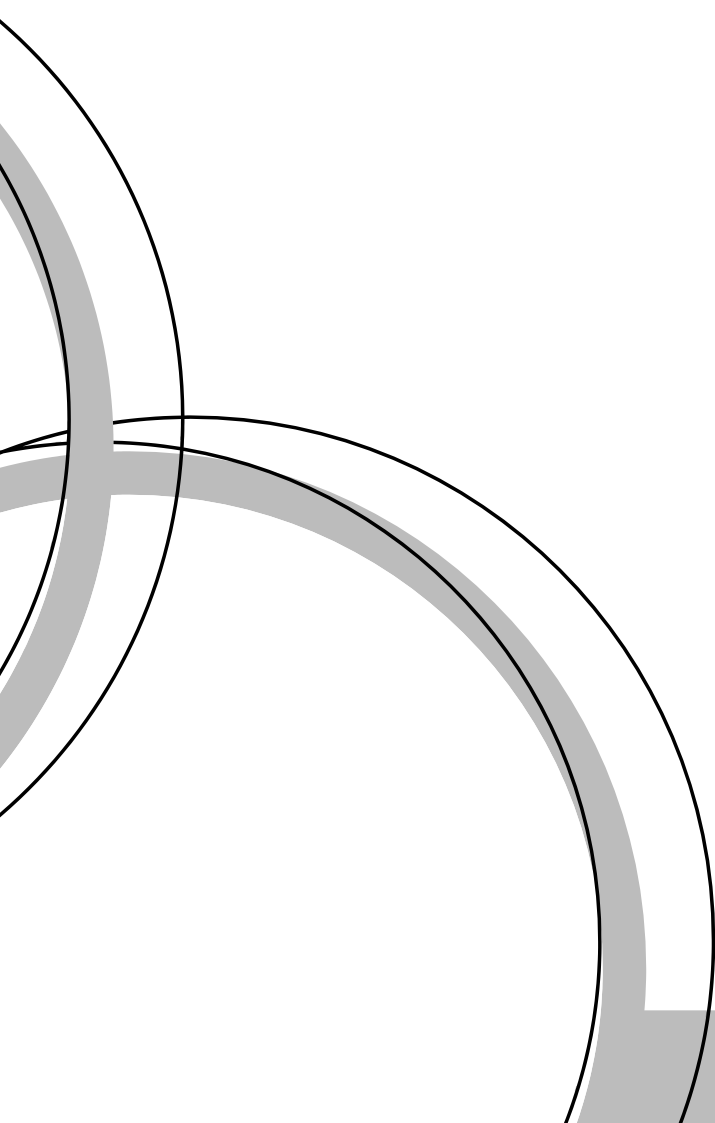




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Conditions of Contract

§ 1 Subject of the Agreement and description of service

- (1) The provider shall perform the deliverable in accordance with the terms in the Agreement and subsequently agreed-upon terms in exchange for the agreed-upon remuneration.
- (2) The provider shall only bear the responsibility for success provided that
 - (a) the decisive criteria for this were specifically and conclusively defined at the conclusion of the Agreement in the description of service in regards to the scope and effect and became the subject of the Agreement (Agreed-upon Performance Criteria) and
 - (b) the client fulfills its duties of cooperation properly and in a timely manner unless the duties of cooperation have no effects on the performance of service.
- (3) The description of service shall be based on the client's technical and functional requirements of which the client gave notice. The description of service shall conclusively reflect the Agreed-upon Performance Criteria (§ 1 Subs. 2 a) and any test criteria to be used for this purpose. The description of service shall only be changed in accordance with Item 4. The provider shall only perform any analysis, planning, and consulting services for the description of service on the basis of a separate Agreement.
- (4) Provided that it is not yet agreed upon in the description of service, the contracting parties shall agree upon testware and the test cases (§§ 6 Subs. 1 and 6 Subs. 6 e) by means of the Agreed-upon Performance Criteria to check the Performance Criteria. These items shall be agreed upon by a date agreed upon in the Agreement, but at the latest two weeks after the Agreement is signed.

Provided that the testware is not agreed upon by two weeks after the date intended therefor, the provider may on its part define suitable testware with a binding effect. The client's interests shall be appropriately considered.
- (5) Provided that the provider does not owe any success under the Service Agreement, the ORDAT Conditions of Contract for Services shall apply unless and provided that it is agreed upon to the contrary.

§ 2 Collaboration of the contracting parties

- (1) The contact persons (§ 2 Subs. 1 of the ORDAT General Conditions of Contract, hereinafter ORDAT GCC) shall immediately make the decisions that relate to performing the Agreement and shall be available for necessary information.

The decisions of the contact persons shall be documented.
- (2) The place of performing the service is the main office of the provider provided that nothing to the contrary is agreed upon.

§ 3 Duties of cooperation

- (1) The client shall take care that the documents, information, and data that are necessary for performing the service are completely, correctly, in a timely manner, and free of charge available to the provider, provided that this is not owed by the provider. The provider may assume that these documents, information, and data are complete and correct unless the provider recognizes or should recognize that they are incomplete or are incorrect.

- (2) The client shall properly and in a timely manner transfer the testware defined in § 1 Subs. 3. If the client is delayed in transferring, the provider shall be entitled to create or procure suitable testware at the client's cost.
- (3) The client shall especially report defects in accordance with § 2 Subs. 3 of the ORDAT GCC.

§ 4 Procedures to change services

Both contacting parties may suggest changes to the description of service (§ 1 Subs. 3) and performance of service. To do so, the following procedure is agreed upon:

- (1) The provider shall examine the client's suggestions for change and give notice to the client whether a comprehensive examination of the suggestions for change is required or not.
- (2) If a comprehensive examination of the suggestions for change is required, the provider shall give notice to the client within an appropriate deadline of the presumable time period and the remuneration that will be required. The client shall issue or reject the examination order within an appropriate deadline.
- (3) If a comprehensive examination of the suggestions for change is not required, or the examination that was commissioned is completed, the provider shall either
 - (a) provide the client with a written offer to perform the changes (Change Offer). The Change Offer shall especially contain the changes to the description of service and its effects on the performance period, the planned due dates, the testware, and the remuneration, or
 - (b) give notice to the client that the suggestions for change as part of the agreed-upon services are not feasible for the provider.
- (4) The client shall either reject the Change Offer within the acceptance deadline stated in the Change Offer (Binding Period) or accept it in writing or in another agreed-upon form. The client shall give immediate notice to the provider of any rejections.
- (5) Provider and client may agree that services affected by a suggestion for change be discontinued until the examination has been ended, or until the expiration of the Binding Period provided that a Change Offer is made.
- (6) Work shall be continued on the basis of the current contractual agreements until the Change Offer is accepted. The performance periods shall be extended by the amount of calendar days for which the work related to the suggestions for change or the examination thereof was discontinued. The provider may demand appropriate remuneration for the duration of the discontinuation (§ 4 Subs. 5) unless and provided that the provider has utilized its employees that were affected by the discontinuation elsewhere, or has maliciously refrained from utilizing them.
- (7) The procedure to change services shall be documented at the provider's demand in writing or in text form on a form from the provider, provided that nothing to the contrary is agreed upon. Every change to the contractual agreement including but not limited to the description of service shall be agreed upon in writing.
- (8) §§ 4 Subs. 2 to 4 Subs. 7 shall apply accordingly to the provider's suggestions for change.
- (9) Suggestions for change shall be directed to the contracting party's contact person (§ 2 Subs. 1)

§ 5 Rights of use

- (1) The provider shall grant the client the non-exclusive right to the service results that the provider performed under the Agreement and transferred to the client. The client may use the service results at its office for its own internal purposes within the scope of the contractually foreseen application purpose for an unlimited period of time. It is only permissible for rights of use to be transferred to third parties if the client's rights are completely given up. The client is obligated to



impose on the third party the obligations and limitations of use that apply to the client. This shall especially apply to the obligations according to § 5 Subs. 4. At the provider's request, the client shall confirm in writing that it has given up its own use of the software.

- (2) In other respects, all rights remain with the provider.
- (3) The client shall give immediate notice to the provider if the client has knowledge that unauthorized access or unauthorized use is threatened or has been undertaken in the client's area of influence. The provider shall be entitled to take appropriate technical actions to protect against use that is not in accordance with the Agreement. This may not significantly affect use of the services in accordance with the Agreement.
- (4) The client may not undertake anything that could facilitate unauthorized use. The client especially may not try to decompile the programs unless the client is authorized to do so by § 69 German Copyright Act (UrhG) for interfaces to software that is not delivered by the provider. Before decompiling, the client shall first request the required information from the provider.
- (5) The provider may terminate the client's rights of use if the client substantially violates the limitations of use or other regulations that are for protecting against unauthorized use. The provider shall first set a grace period for the client for remedial action. The provider may terminate the rights without setting a grace period in the event of recurrence and for special circumstances that justify immediate termination taking the interests of both parties into consideration. The client shall give written confirmation to the provider of the discontinuance of use after the termination. The provider shall grant the client the rights of use again after the client has stated and given assurance in writing that no violations whatsoever of the rights to use exist any longer by the client's use and that previous violations and their effects have been remedied.

§ 6 Acceptance

- (1) The client shall declare acceptance within 14 calendar days after receiving the provider's written request for acceptance provided that no other deadline was agreed upon. During this testing period, the client may assure itself using testware (§ 1 Subs. 3) if needed that the deliverables are in accordance with the Agreement.
- (2) Provided that nothing to the contrary is agreed upon, claimed defects shall be classified in the one of the following categories:
 - (a) Category 1
The deliverable has a defect that makes use impossible, or only allows use with severe limitations.
 - (b) Category 2
The deliverable has a defect that limits use without it being a defect from category 1.
 - (c) Category 3
The deliverable has a defect that limits use minimally.
- (3) The client may refuse to declare acceptance in the case of a defect from category 1. This also applies if several defects from category 2 lead to effects of category 1. The provider shall remedy defects that are properly (Item 3.3) reported with effects of category 1 in an appropriate period of time in such a way that effects of category 1 no longer exist. As long as a test cannot be properly performed due to such a defect, its effects, or the remedying thereof, the testing period shall be appropriately extended for the deliverables affected thereby. Claims due to defects after the declaration of acceptance shall remain unaffected.
- (4) Partial acceptance that has already been declared shall remain unaffected by tests of acceptance that come later for other services. The same shall apply to tests that have already been performed unless and provided that they are affected by a defect or the remedy thereof.



- (5) The service shall be regarded as able to be accepted if no effects of defects from category 1 exist
- (6) The deliverables shall be regarded as accepted without the explicit declaration and without the provider's request for acceptance,
 - (a) if the client begins use of the deliverable for purposes other than testing (§ 1 Subs. 3), or
 - (b) upon payment unless the client has justifiably refused acceptance, or
 - (c) if the client does not claim any defects within the testing period in accordance with § 6 Subs. 1 that hinder acceptance, or
 - (d) if the client does not claim any defects within an appropriate period set for the client by the provider that hinder acceptance, and the provider gave notice of this result when the period was set, or
 - (e) if the tests can be performed when using the testware (§ 1 Subs. 3 and § 3 Subs. 2) without defects occurring that hinder acceptance.
- (7) Distinct partial deliverables shall also be individually accepted according to these regulations provided that nothing to the contrary is agreed upon.

§ 7 The client's claims of defects

- (1) The client shall only have claims of defects if reported defects are able to be reproduced or can be proven in another way. This shall also apply to defects for which rights are reserved at acceptance. § 3 Subs. 3 shall especially apply to giving notice of defects.
- (2) If the client is entitled to claims of defects, the client shall at first only have the right to subsequent performance within an appropriate deadline. Subsequent performance shall at the provider's choice include either remediation of defects or recreation.
- (3) If the subsequent performance fails, or if it cannot be performed for other reasons, the client may reduce the remuneration in accordance with the statutory requirements, rescind the Agreement, and/or demand compensation of damages or expenditure in accordance with § 6 of the ORDAT GCC. The client shall only be entitled to self-help subject to a charge if a defect is not remedied in spite of the expiration of an appropriate deadline for subsequent performance, and the reason therefor is in the provider's sphere of influence.

If the subsequent performance is delayed, § 3 Subs. 4 of the ORDAT GCC shall apply to the provider's compensation of damages or expenditure. § 6 of the ORDAT GCC shall apply to compensation of damages or expenditure.

The client shall exercise its option to which it is entitled in regards to these claims of defects within an appropriate deadline. This is normally within 14 calendar days from the client's opportunity to announce the option chosen.

- (4) § 4 of the ORDAT GCC shall apply additionally to material defects; § 5 of the ORDAT GCC shall apply additionally to defects of title. § 641 Subs. 3 German Civil Code (BGB) shall remain unaffected.

§ 8 Early termination

- (1) If a minimum duration of the Agreement has been agreed upon, ordinary termination before the expiration of the minimum duration is excluded.
- (2) If a minimum duration has not been agreed upon, and the client terminates before acceptance, the provider is entitled to demand the agreed-upon remuneration. However, the provider must allow the expenses to be credited that it saves as a result of the rescission of the Agreement, or that it obtains by using the provider's ability to work elsewhere, or that it maliciously refrains from



» Conditions of Contract

obtaining. It shall be presumed that according to this, 10% of the agreed-upon remuneration due for the yet unperformed part of the deliverable is due to the provider.

§ 9 Applicability of the ORDAT GCC

In addition the ORDAT General Conditions of Contract shall apply (ORDAT GCC).

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