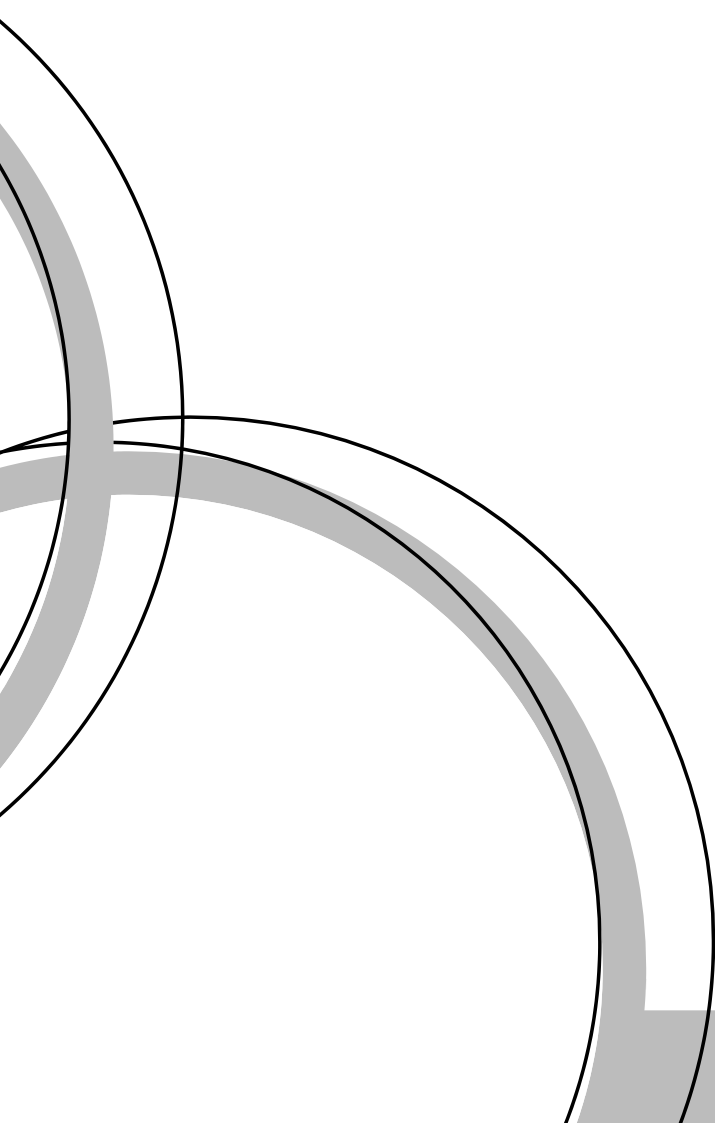


**ORDAT**  
**Conditions of Contract for the**  
**Creation of Software**





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## Conditions of Contract

### § 1 Subject of the Agreement

- (1) The provider shall create software for the client in accordance with the description of service upon which the conclusion of the Agreement is based (see § 2 Subs. 2).
- (2) The reproduction of the software that the provider shall deliver to the client only contains the object code.
- (3) The software shall be delivered with operating instructions (user documentation or online help). The operating instructions shall be written in the language of the user interface of the software provided that nothing to the contrary is agreed upon.  
  
The delivery or creation of more detailed documentation requires separate written agreement including but not limited to the contents and the scope of the documentation.
- (4) The provider shall create the software and the operating instructions (together known as products) in accordance with accepted professional standards.
- (5) Analysis, planning, consultation, and training services are not the subject of this Agreement and are not owed by the provider.

### § 2 Collaboration of the contracting parties

- (1) The client shall completely share its technical and functional requirements of the software to the provider in detail and shall transfer all documents, information, and data to the provider in a timely manner that are required for creating the software. This also includes the description of practice-oriented and suitable test cases and data for the quality test (§ 7 Subs. 1).
- (2) The description of service shall conclusively reflect the quality of the software that is owed. The description of service shall only be changed in accordance with § 3. The provider shall also perform analysis, planning, and consultation services in relation to the description of service only on the basis of a separate agreement for separate remuneration (see also § 1 Subs. 5).
- (3) The provider shall engage the project manager that the client named as the contact person (§ 2 Subs. 1 ORDAT General Conditions of Contract, hereinafter ORDAT GCC) provided that this is required to perform the Agreement. The decisions of the contact persons are to be put into writing.
- (4) The client has no claim for services to be performed at its office.

### § 3 Procedures to change services

Both contracting parties may suggest changes to the description of service (§ 2 Subs. 2) and to the performance of service. To do so, the following 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 their effects on the performance period, the planned due dates, 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 (Binding Period) stated in the Change Order, or declare acceptance in writing or in another form agreed upon between the contracting parties. 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) The 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 in relation to the suggestions for change or the examination thereof was discontinued. The provider may demand appropriate remuneration for the duration of the discontinuation (§ 3 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. All changes to the description of services shall be agreed upon in writing or in another form agreed upon between the contracting parties.
- (8) §§ 3 Subs. 2 to 3 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. 3).

#### **§ 4 Rights of use and protection from unauthorized use**

- (1) Upon full payment of the remuneration that is owed, the provider shall grant the client the non-exclusive right to use the products for the contractually intended purpose of utilization at the client's company for an unlimited period of time provided that nothing to the contrary is agreed upon. 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. 8.  
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 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 software on an alternative or subsequent configuration.
- (4) 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 (see also § 5 Subs. 8). 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 affects have been remedied.

## **§ 5 The client's obligations**

- (1) The client shall take care to ensure that qualified personnel are provided to accompany the project and aid the provider and are provided as of the transfer for the Quality Test (§ 7 Subs. 1) and using the software.
- (2) The client shall at the provider's demand provide suitable test cases and data for the Quality Test in machine-readable form (see § 2 Subs. 1). If the client refrains from transferring such test cases and data, the provider itself may select and create suitable test cases for additional remuneration.
- (3) After notification of delivery, the client is obligated to download a software provided for this purpose.
- (4) The client shall especially report defects in accordance with § 2 Subs. 3 of the ORDAT GCC. The provider's appropriate forms and procedures shall be used for this provided that nothing to the contrary is agreed upon.
- (5) The client shall aid the provider if required with performing the Agreement and with remedying defects in accordance with § 2 Subs. 2 ORDAT GCC and shall provide other analysis material.
- (6) The client shall give the provider immediate notice of changes to the use requirements after the transfer.
- (7) Provided that nothing to the contrary is agreed upon, the client shall also preserve all documents, information, and data that were transferred to the provider and shall preserve them in such a way at its office that these materials can be reconstructed using data storage devices in the case of damage and loss.
- (8) The client may not undertake anything that could facilitate unauthorized use. The client especially may not try to decompile the software unless the client is authorized to do so. The client shall give immediate notice to the provider if the client has knowledge that unauthorized access is threatened, or has been made in the client's area of influence.

## **§ 6 Transfer and transfer of risk**

- (1) The provider may also transfer the products to the client by electronic transfer, or by providing the products for download provided that nothing to the contrary is agreed upon. If the products are provided for download, the provider shall give the client notice of the provision for download.
- (2) Provided that the products are transferred electronically, the risk of accidental loss shall be transferred to the client when the teleservice provider commissioned by the provider with the further delivery receives the products.
- (3) Provided that the products are provided for download, the risk of accidental loss shall be transferred to the client when the products are provided, and the client is informed about it.

## **§ 7 Quality Test and the client's claims of defects**

- (1) The client shall immediately—normally within 14 calendar days—examine all transferred products for freedom from defects including but not limited to software or operable parts of the software agreed upon as a partial delivery and shall especially examine them for quality that is in accordance with the Agreement (Quality Test). To do so, the client shall utilize practice-oriented and suitable test cases and data for the software (see § 2 Subs. 1). The provider may coordinate with the client in regards to test procedures and may also oversee and aid with the Quality Test on site.



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- (2) The client shall give proper notice immediately of any defects that occur during or after the Quality Test, but at the latest within seven calendar days after obtaining knowledge thereof (§ 5 Subs. 4).
- (3) Additionally, the commercial duty to examine and to give notice of defects shall apply (§ 377 German Commercial Code (HGB)).
- (4) The provider shall warrant that the products correspond with quality that is in accordance with the Agreement if the products are used in accordance with the Agreement. § 4 of the ORDAT GCC shall especially apply to material defects. § 5 of the ORDAT GCC shall especially apply to defects of title.
- (5) The client shall only have claims of defects if reported defects are able to be reproduced or can be proven in another way. §§ 5 Subs. 4, 7 Subs. 2, and 7 Subs. 3 shall especially apply to giving notice of defects.
- (6) 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. The subsequent performance shall at the provider's choice include either remediation or creation of a new product. The client's interests shall be appropriately considered when the provider chooses the type of subsequent performance.
- (7) 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.

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 especially 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.

## § 8 Applicability of the ORDAT GCC

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