

ORDAT
General Conditions of Contract

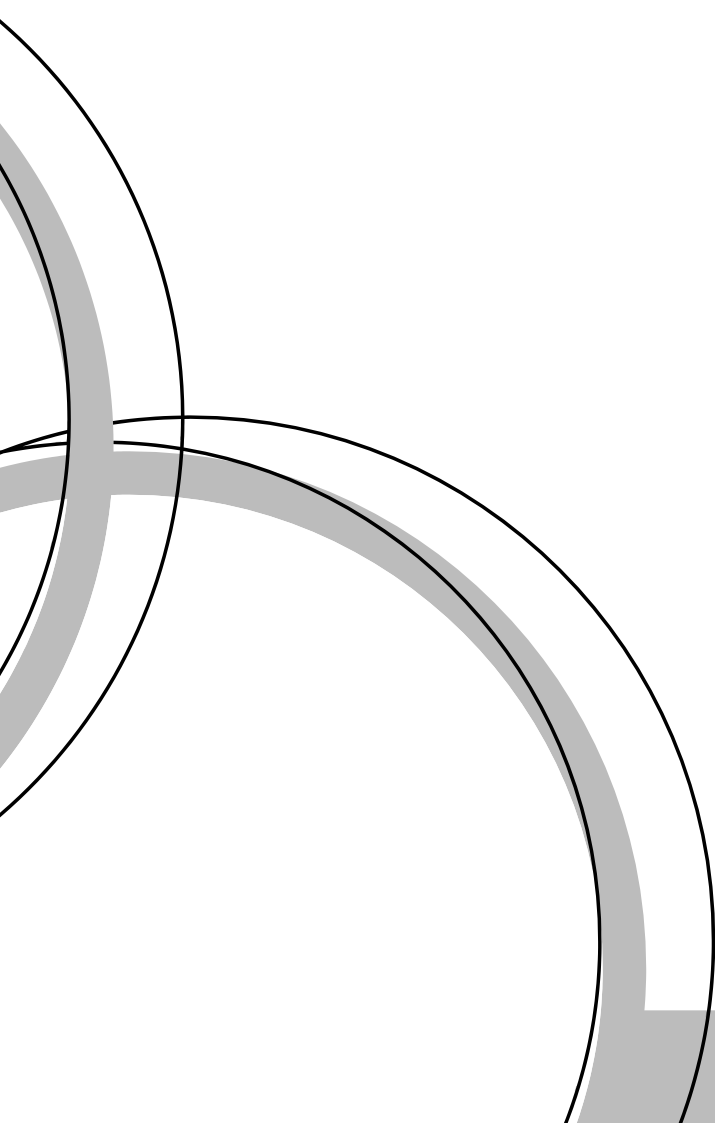




Table of Contents

Table of Contents	2
General Conditions of Contract	3
§ 1 Remuneration, payment, service protection, and deadlines	3
§ 2 Collaboration, duties of cooperation, confidentiality	4
§ 3 Disruption of service performance	4
§ 4 Material defects and reimbursement of expenses	5
§ 5 Legal defects	6
§ 6 The provider's general liability	6
§ 7 Data protection	7
§ 8 Miscellaneous	7

General Conditions of Contract

§ 1 Remuneration, payment, service protection, and deadlines

- (1) Remuneration shall be billed at cost at the provider's prices generally valid at the time that the Agreement was concluded provided that nothing to the contrary is agreed upon. Remuneration is normally net prices plus statutory value-added tax that is incurred.

The provider may bill on a monthly basis. If services are remunerated at cost, the provider shall document the type and duration of work and shall convey this documentation with the invoice.

- (2) All invoices shall normally be due to be paid at the latest 14 calendar days after receipt and free of payment charges and without deduction.
- (3) The client may only offset or retain payments due to defects provided that it is actually entitled to payment claims due to material or legal defects of the service. For other claims of defects, the client may only retain a proportional part of payments considering the defect. § 4 Subs. 1 shall apply accordingly. The client shall have no right of retention if its claim of defects is time barred. Moreover, the client may only offset or exercise a right of retention by means of claims that are uncontested or that have become *res judicata*.
- (4) The provider shall retain title and the rights that are to be granted from the services until complete payment of the remuneration that is owed has been made. Justified retentions of payment due to defects according to § 1 Subs. 3 Sent. 2 are considered. Furthermore, the provider shall retain title until all of its claims from the business relationship with the client have been fulfilled.

The provider is entitled to deny the client further use of the services for the duration of the client's default in payment. The provider may only assert this right for an appropriate time period, which is normally 6 months at the most. This does not constitute rescission of the Agreement. § 449 Subs. 2 German Civil Code (BGB) remains unaffected.

If the client or its customer return the services, acceptance does not constitute rescission on the part of the provider unless it has explicitly declared rescission. The same applies to the provider attaching goods subject to reservation of title or rights to the goods subject to reservation of title.

The client may neither pledge nor assign as security items subject to reservation of title or reservation of rights. The client shall only be permitted to resell as a reseller during the normal course of business with the condition that the client's claims against its customer in regards to the resale have been effectively assigned to the provider by the client and the client shall transfer title to its customer under the condition of payment. By concluding this Agreement, the client shall assign its future claims against its customers in relation to such sales as security to the provider who hereby accepts these assignments.

Provided that the value of all the provider's secured rights exceeds the amount of the secured claims by more than 20%, the provider shall, upon the client's request, release a proportionate amount of its security interest.

- (5) The client is obligated to impose the contractually agreed-upon restrictions on the receiver in the case of a permissible transfer of rights of use to deliveries and services.
- (6) If by the contractual payment due date the client does not completely or partially settle a claim that is due, the provider may revoke all agreed-upon payment due dates for all claims.

Furthermore, the provider is entitled to only perform other services with advance payment or with security by a performance guarantee of a bank or a credit insurer that is licensed in the European Union. Advance payment must include the relevant billing period or for one-time services its remuneration.



» General Conditions of Contract

- (7) If the client is economically unable to fulfill its obligations towards the provider, the provider may without prior notice end its existing exchange agreements with the client by rescission or its long-term commitments by termination and also in the case of an insolvency application on the part of the client. § 321 BGB and § 112 German Insolvency Statute (InsO) remain unaffected. The client shall inform the provider in a timely manner in writing about impending insolvency.
- (8) Fixed service deadlines shall be exclusively, explicitly agreed upon in documented form. Agreement upon a fixed service deadline, is subject to the proviso that the provider receives the services of its preliminary suppliers in a timely manner and according to contract.

§ 2 Collaboration, duties of cooperation, confidentiality

- (1) Client and provider shall each name a responsible contact person. The communication between the client and the provider is made by these contact persons provided that nothing to the contrary is agreed upon. The contact persons shall immediately obtain all decisions that are in relation to performing the Agreement. The decisions are to be documented in a binding manner.
- (2) The client is obligated to aid the provider if this is required and to create all conditions that are required to properly perform the order in the client's sphere of operation. To do so, the client shall especially provide necessary information and if possible enable remote access to the client's system. Provided that remote access is not possible because of security or other reasons, the deadlines affected thereby shall be appropriately extended. The contracting parties shall agree upon an appropriate regulation for other effects caused by this. Furthermore, the client shall make sure that qualified personnel is provided to aid the provider.

Provided that is agreed upon in the Agreement that services may be performed on site at the client's location, the client shall provide sufficient work places and work equipment free of charge at the desire of the provider.

- (3) The client shall immediately report defects in writing in an understandable and detailed form indicating all information that aids with identification of defects and with defect analysis. The work steps that led to the occurrence of the defect, the manifestation, and the effects of the defect shall especially be indicated. The provider's appropriate forms and procedures shall be used for this provided that nothing to the contrary is agreed upon.
- (4) The contracting parties are obligated to maintain secrecy about business and trade secrets as well as about other information declared to be confidential that becomes known in relation to performing the Agreement. Such information may only be disclosed to persons that are not involved with concluding, performing, or processing the Agreement upon written consent of the other contracting party. Provided that nothing to the contrary is agreed upon, this obligation ends upon the expiration of five years after the information becomes known, but in the case of long-term commitments not before they are ended.

The contracting parties shall also impose these obligations on their employees and any third parties that are utilized.

- (5) The contracting parties are aware that electronic, unencrypted communication (e.g. by email) represents a potential security risk.

In the case of this type of communication, they shall, therefore, not assert any claims based on the absence of encryption unless encryption has been agreed upon in advance.

§ 3 Disruption of service performance

- (1) If a cause for which the provider is not responsible affects complying with the deadline including strikes or lock outs ("Disruption"), the deadlines shall be extended for the duration of the Disruption, and this shall include an appropriate restart phase if required. A contracting party

» **General Conditions of Contract**

shall immediately inform the other contracting party about the cause of a Disruption occurring in its area and about the duration of the extension.

- (2) If the expenses increase due to a Disruption, the provider may also demand remuneration for the extra expense unless the client is not responsible for the Disruption, and unless its cause is outside of the client's area of responsibility.
- (3) If the client can demand or claim rescission from the Agreement and/or damages instead of the service due to improper service on the part of the provider, the client shall at the demand of the provider declare in writing within an appropriate deadline whether the client will assert these rights or whether the client continues to desire the performance of the service. In the case of rescission, the client shall reimburse the provider the value of previously existing potential uses. The same applies to deterioration as a result of proper use.

If the provider falls behind on the performance of service, the client's compensation for damages and expenses due to the delay is limited to 0.5% of the price for the portion of the contractual service that cannot be used due to the delay per completed week of the delay. Liability for delay is limited to a total of 5% of the remuneration for all contractual services affected by the delay; for long-term commitments it is related to the remuneration for the specifically affected services for the complete calendar year. Additionally and most importantly, a percentage rate agreed upon at the conclusion of the Agreement for the remuneration agreed-upon at the conclusion of the Agreement shall apply. This shall not apply provided that a delay is based on the provider's gross negligence or intent.

- (4) If the service is delayed, the client shall only have a right of rescission under statutory provisions if the provider is responsible for the delay. If the client due to the delay claims justified compensation of damages or expenditure instead of the service, the client is entitled to demand 1% of the price of the part of the contractual service that cannot be used due to the delay for each completed week of the delay. However, this is limited to a total of 10% of this price; for long-term commitments it is related to the remuneration for the specifically affected services for the complete calendar year. Additionally and most importantly, a percentage rate agreed upon at the conclusion of the Agreement for the remuneration agreed-upon at the conclusion of the Agreement shall apply.

§ 4 **Material defects and reimbursement of expenses**

- (1) The provider shall provide a guarantee for the contractually owed quality of the services. No claims of material defects shall exist for the provider's services that do not substantially deviate from the contractual quality of the services.

Also no claims for defects exist for excessive or improper use, natural wear and tear, failure of components of the system environment, non-reproducible software errors or other software errors not able to be proved by the client, or in the case of damages that result from special external influences that are not presupposed by the Agreement.

This also applies in the case of subsequent changes or maintenance by the client or third parties unless this does not make analysis and removing a material defect more difficult.

§ 6 shall additionally apply for claims of compensation of damages and expenses.

- (2) The limitation period for claims of material defects is one year from the statutory start of the limitation period. The statutory time periods for recourse according to § 479 BGB remain unaffected.

The same applies to the provider's intent or grossly negligent breach of obligation, to fraudulent concealment of defects, to cases of injury to life, body, or health, and to claims from the German Product Liability Act provided that the law prescribes longer periods pursuant to § 438 Subs. 1 No. 2 or § 634a Subs. 1 No. 2 BGB.



» General Conditions of Contract

Processing of the client's report of a defect as to quality by the provider shall only lead to suspension of the period of limitation provided that the legal prerequisites for this exist. This shall not cause a new beginning of the limitation period.

Subsequent performance (replacement delivery or reworking) may only have influence on the limitation period of the defect that causes the subsequent performance.

- (3) The provider may demand remuneration of its expenses provided that
 - (a) the provider works because of a defect without a defect existing unless with reasonable effort the client was not able to detect that no defect existed, or
 - (b) a reported disruption was not able to be reproduced or able to be proven in another way by the client as a defect, or
 - (c) additional expense is due because of improper fulfillment of duties on the part of the client (see also § 2 Subs. 2, § 2 Subs. 3 and § 5 Subs. 2).

§ 5 Legal defects

- (1) The provider is only liable for infringements of third-party rights from the provider's service provided that the service is according to contract and especially is utilized without changes in the contractually agreed-upon, otherwise in the prescribed environment for utilization.

The provider is only liable for infringements of third-party rights within the European Union and the European Economic Area as well as the place of the use of the service in accordance with the Agreement. § 4 Subs. 1 Sent. 1 shall apply accordingly.

- (2) The client shall immediately inform the provider if a third party lodges a claim against the client alleging that a service of the provider infringes its rights. The provider and if necessary its preliminary suppliers are entitled but not obligated to defend the claims that were made at their costs if it is permissible.

The client is not entitled to recognize third-party claims before the client has given the provider ample opportunity to defend against third-party rights in another way.

- (3) If third-party rights are infringed by one of the provider's services, the provider shall at its own choice and its own costs
 - (a) give the client the right to use the service, or
 - (b) design the service in a way that is free of infringements of rights, or
 - (c) take the service back and reimburse the remuneration provided by the client (less an appropriate compensation for use) if the provider cannot provide any other remedy with an appropriate amount of effort.

The client's interests shall be appropriately considered.

- (4) The client's claims due to legal defects become time barred according to Item 4.2. Item 6 shall apply additionally to the client's claims of compensation for damages and expenses, and Item 4.3 shall apply accordingly to the provider's additional expenses.

§ 6 The provider's general liability

- (1) The provider shall always be liable to the client
 - (a) if the provider, his legal representatives, or vicarious agents cause damages intentionally or cause damages by gross negligence,
 - (b) in accordance with the German Product Liability Act, and

- (c) for damages from injury to life, body, or health for which the provider, his legal representatives, or vicarious agents are responsible.
- (2) The provider is not liable for minor negligence unless and provided that the provider has breached a substantial contractual obligation whose fulfilment makes proper performing of the Agreement possible in the first place, or its breaching endangers the fulfillment of the contractual purpose upon which the customer may regularly rely.

This liability is limited to typical contractual and foreseeable damages in the case of damage to property and economic loss. This also applies for lost profit and unrealized savings. Liability for other distant consequential damages is excluded.

Liability is limited to the value of the Agreement for individual cases of damages. For ongoing remuneration, it is limited to the amount of the remuneration per year of the Agreement, but not to less than €50,000. Item 4.2 shall apply accordingly to the limitation period. The contracting parties may at the conclusion of the Agreement agree in writing upon further liability that is usually remunerated separately. An individually agreed-upon liability sum is of most importance. Liability according to § 6 Subs. 1 remains unaffected by this subsection.

Additionally and most importantly, the provider's liability due to minor negligence from a specific Agreement and the performance thereof is limited to compensation for damages and expenses—regardless of the legal basis—totalling to the percentage rate of the remuneration agreed upon in this Agreement at the conclusion thereof. Liability according to § 6 Subs. 1 (b) remains unaffected by this subsection.

- (3) The provider shall only be liable for damages from a guarantee statement if liability is expressly assumed in the guarantee. For minor negligence, this liability is subject to the limitations of § 6 Subs. 2.
- (4) For data loss, the provider is only liable for those expenses that are required to restore the data if the data has been properly secured by the client. In the case of the provider's minor negligence, this liability shall only occur if the client performed appropriate data security according to the appropriate due diligence obligations and the type of data previous to the action that led to the loss of data.
- (5) §§ 6 Subs. 1 to 6 Subs. 4 shall apply accordingly to the client's claims for reimbursement of expenses and other liability claims against the provider. §§ 3 Subs. 3 and 3 Subs. 4 remain unaffected.

§ 7 Data protection

The client shall conclude the required agreements with the provider for possible access to personal data and shall also comply with the special requirements for contract data processing (§ 11 German Federal Data Protection Act (BDSG)).

§ 8 Miscellaneous

- (1) For deliveries or services, the client shall at his own responsibility comply with the applicable import and export provisions, especially those of the U.S.A. The client shall bear the duties, fees, and other taxes incurred for cross-border deliveries or services. The client shall at his own responsibility handle statutory or official procedures related to cross-border deliveries or services unless explicitly otherwise agreed.
- (2) German law shall apply to this Agreement. The use of UN sales law is excluded.
- (3) The provider shall perform its services on the basis of its General Terms and Conditions (GTC). The client's GTC shall not apply even if the provider has not explicitly objected to them.



» **General Conditions of Contract**

If the client accepts the services, this is regarded as acknowledgement of the providers GTC and shall waive the client's GTC.

Other terms are only binding if the provider has acknowledged them in writing. The provider's GTC shall then apply in addition.

- (4) Amendments and supplements to this Agreement shall only be agreed upon in writing. The text form shall not be sufficient, provided that the written form is agreed upon (e.g. for terminations or rescissions).
- (5) The place of the provider's main office is the jurisdiction and venue towards a business man, a legal entity under public law, or special fund under public law. The provider may also sue the client at the place of the client's main office.

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