

General Terms and Conditions of Business for Service Agreements entered into by creatision GmbH

1. Scope of Application

The following General Terms and Conditions of Business (GT&Cs) shall apply to all agreements for the provision of services entered into by creatision GmbH (hereinafter referred to as: the “Contractor”) and the customer, in each case in the version in force at the time of the awarding of the contract in question. Unless the parties stipulate otherwise, all extension of offers and performance of services by the Contractor shall be governed by these GT&Cs. Any business terms and conditions of the customer that diverge from these GT&Cs shall only be deemed to form part of the contractual arrangements entered into by the parties where the Contractor previously and expressly gives its consent thereto in writing.

The following provisions shall only apply in the context of dealings with entrepreneurs/enterprises within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) and with public law entities or legal funds.

2. Subject Matter of the Agreement

- 2.1. The subject matter of the agreement shall be the performance of advisory services with regard to software, in particular in the project management, process consultation and innovation consultation context. A description of the specific service to be performed in each case shall be contained in the wording of the offer in question.
- 2.2. Any agreements concluded with regard to the development and/or creation and/or licensing of software products (including: websites and applications for mobile terminal devices) by the Contractor shall be governed solely by the Contractor’s “General Terms and Conditions of Business for Software Licensing and Development Agreements”.
- 2.3. Any amendments to the scope of the services to be provided which are undertaken after the conclusion of the agreement shall only become part of the agreement where they have been effected in writing.

3. Conclusion of the Agreement

- 3.1. An agreement shall be deemed to have been concluded upon the customer’s acceptance of an offer extended by the Contractor. The Contractor shall only be bound by the terms of an offer extended by it for a period of 14 days from the date of the customer’s receipt thereof.
- 3.2. The Contractor shall only be bound by offers and agreements of an oral nature once they have been expressly confirmed in writing.

4. Conferral of Rights of Use by the Customer / Warranties and Representations

- 4.1. The customer shall confer upon the Contractor all rights that are necessary – from a temporal, a geographical and an objective perspective – for the performance by the latter of its services in accordance with the agreement. This shall apply with regard to any trademarks, copyrights, registered design rights and patents, in particular.

- 4.2. The customer declares and warrants that he/it is entitled to confer the rights specified in Section 4.1 upon the Contractor.
- 4.3. The customer furthermore warrants that he/it is entitled to take the actions and issue the declarations provided for by these provisions and the agreement in question.
- 4.4. The warranties given by the customer shall extend to the legally unobjectionable nature of the data, products and/or items in the customer's possession in terms of third-party rights, in particular copyrights, rights to a name, rights to privacy and industrial property rights (e.g. patents, utility models, trademarks, registered designs). Should any third parties take action against the Contractor and/or third parties commissioned by the latter to assist it in the fulfilment of its obligations on grounds of an infringement of any such rights, the customer shall, upon a corresponding request from the Contractor, indemnify the latter and/or the third parties in question against any such third-party claims and reimburse any reasonable costs incurred in connection with the mounting of a legal defence against those claims.

5. Conferral of Rights of Use by the Contractor

- 5.1. The Contractor shall not be obligated to create any rights, in particular trademarks, copyrights, registered design rights or patents, in the context of the performance of its services.
- 5.2. Should any such rights accrue in the context of the performance of its services, the Contractor shall confer upon the customer a simple right to use the intellectual property rights created by the Contractor and/or its employees and/or vicarious agents in the context of the performance of its services, which right shall not be subject to any limitations of a temporal or geographical nature and shall not be eligible for assignment and/or sub-licensing.
- 5.3. Should a third party bring a claim against the customer on grounds of an infringement of proprietary rights resulting from the exercise, in accordance with this agreement, of the rights of use pursuant to this Section 5, the customer shall inform the Contractor accordingly in writing without delay and entrust the latter with the amounting of a defence against such claim. The customer shall assist the Contractor in mounting such a defence to the extent reasonably necessary.

6. Remuneration

- 6.1. The amount of the remuneration to be paid to the Contractor for the performance of its services shall be calculated on this basis of the rates per hour, day, week, month or year specified in the offer in question.
- 6.2. All of the prices indicated in the offer shall be subject to the applicable statutory rate of VAT. Where the amount of remuneration is subject to tax, the Contractor shall specify the tax rate and the amount of VAT separately in its invoice.
- 6.3. In the case of work carried out at the place of performance between the hours of 10 p.m. and 6 a.m. or on Saturdays, Sundays or public holidays, the Contractor shall be entitled to impose a 50 % surcharge in addition to the amount of the remuneration stipulated in the offer.
- 6.4. Unless the parties stipulate otherwise, the Contractor shall issue an invoice for the amount of the remuneration to be paid by the customer for the services performed at the end of each calendar month.

- 6.5. The customer shall furthermore be obligated to reimburse the Contractor for all of its necessary additional expenses and outlay in connection with the performance of its services.
- 6.6. The customer shall be obligated to transfer the total amount indicated in the invoice issued by the Contractor into the bank account specified in the invoice within 14 days.
- 6.7. Should the customer fall into arrears on his/its payments, the Contractor shall be entitled to levy default interest in the amount of nine percentage points above the base interest rate.

7. Obligation to Co-Operate

- 7.1. The customer shall be obligated to comply with all of the co-operation obligations incumbent upon him/it and to assist the Contractor in the performance of its services to the extent reasonably necessary. In particular, the customer shall provide the Contractor with all of the data, documents and information required by the latter for the due fulfilment of its obligations in accordance with both the offer in question and these provisions.
- 7.2. The customer shall also urge his/its employees or agents to co-operate and, where necessary, ensure that appropriately qualified employees and agents who are familiar with and proficient in the processes and applications for the services to be performed are on hand in the necessary number, to the necessary degree and for the necessary period of time. In particular, he/it shall provide the Contractor, in advance of the latter's performance of its obligations, with the details of an appropriately qualified contact person who shall assist the Contractor in performing its services to the extent reasonably necessary. Such contact person shall, upon a corresponding request from the Contractor, be placed at the latter's disposal for the entire duration of the term of the agreement and shall coordinate the necessary contact between the Contractor and the customer's employees.
- 7.3. To the extent that this is necessary for the Contractor's performance of its services and may reasonably be expected of the customer, the customer shall grant the Contractor and its vicarious agents access to its premises, networks and computer systems. He/it shall furthermore and at its own expense provide the Contractor and its vicarious agents with the working materials required by the latter for the performance of the services to the necessary extent, in particular access to its organisational and technical IT/telecommunications infrastructure, information, office materials, data, test data, software products and hardware.

8. Liability

- 8.1. The Contractor shall be liable for any financial losses incurred only to the extent that these are due to a grossly negligent or wilful breach of obligation on its part or on the part of one of its legal representatives or vicarious agents. The limitation of its liability shall not apply in the case of any damage incurred as a result of the breach of an obligation the due fulfilment of which is essential for the proper execution of this agreement and may ordinarily be relied upon by the customer (material contractual obligation), or as a result of loss of life, physical injury or damage to health due to a negligent breach of obligation on the part of the Contractor or a wilful or negligent breach of obligation on the part of one of its legal representatives or vicarious agents. The Contractor shall not be subject to any more extensive liability.

- 8.2. Should the Contractor, in the context of the performance of its advisory services, make use of any examples or presentations relating to other, previously implemented projects or previously developed concepts, the specific examples and/or presentations shall not form part of the advisory services to be performed and shall not be specifically intended for use by the customer. Should the customer use these examples/presentations without previously modifying them in accordance with his/its own requirements, the Contractor shall not be liable for any damage that may be incurred as a result of such use.
- 8.3. The provisions of the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected by the foregoing limitations on liability.
- 8.4. However, the extent of any liability on the part of the Contractor shall be limited to the amount of the damage that may be deemed likely to occur in in the context of the type of transaction and contractual arrangements in question. The Contractor shall be liable for any loss of data only in the amount of the expense which would typically be incurred in connection with the recovery of duly and routinely backed-up data.
- 8.5. All liability claims accruing on grounds of a breach of obligation which is not due to the defective nature of the Contractor's performance of its services shall become time-barred after a period of six months. All other liability claims shall become time-barred after a period of one year. The application of the provisions of Section 202(1) of the BGB shall remain unaffected.

9. Termination of the Agreement

- 9.1. Unless the offer stipulates otherwise, the term of the agreement shall be of unlimited duration.
- 9.2. Each of the parties shall be entitled to terminate the agreement with one month's notice to the end of a given calendar month.
- 9.3. In addition, the parties shall be entitled to terminate the agreement on exceptional grounds for cause.
- 9.4. Notice of termination of the agreement must be effected in writing. The transmission of such notice of termination via fax or e-mail shall be expressly permitted.

10. Confidentiality

- 10.1. "Confidential information" within the meaning of this provision shall comprise all information and documents of the other party in each case which are either designated as confidential or are to be deemed to be confidential in light of the given circumstances. This shall comprise – but not be limited to – information pertaining to operational procedures, business or trade secrets and business relationships, in particular.
- 10.2. The customer and the Contractor shall be obligated to maintain the confidentiality of all confidential information acquired by them in connection with the contractual relationship between the parties and refrain – where this is not necessary for the fulfilment of the agreement – from disseminating such information to any third parties and from using it for purposes other than those stipulated by the agreement. This shall likewise apply to any information provided in the run-up to the conclusion of the agreement.

- 10.3. The confidentiality obligation pursuant to Section 10.2 shall not apply to information which:
- a. Was already known to the other party upon the conclusion of the agreement,
 - b. Was already in the public domain at the time of its dissemination, without this being due to any breach of the confidentiality obligation by the other party,
 - c. Was approved for dissemination pursuant to an express written declaration from the other party to that effect,
 - d. Was legitimately acquired by the other party from other sources not imposing any restrictions as to confidentiality, provided that the dissemination and use of this confidential information does not constitute either a breach of contractual arrangements or an infringement of statutory provisions or an official decree,
 - e. Was developed by the other party himself/itself without any access to the confidential information of the party in question,
 - f. Must be disclosed pursuant to either statutory provision of information, notification and/or disclosure obligations or official decree. The party under such obligation to disclose the information shall, to the extent permissible, inform the other party accordingly as soon as possible and assist the latter to the best of his/its ability in contesting the enforcement of such obligation.
- 10.4. Should one of the parties be made aware of confidential information by a third party, he/it shall be obligated to inform the other party accordingly in writing without delay.

11. Retention and Safeguarding Measures

- 11.1. The Contractor shall retain all of the documents that are necessary for the performance of its services for the duration of the term of the agreement and return them to the customer upon the expiration of this agreement. The customer shall be entitled to demand the return of all documents handed over in connection with the agreement at any time should the collaboration between the parties be prematurely terminated, irrespective of the grounds for such termination. The Contractor shall hand the documents over to the customer within ten business days of a corresponding request from the latter. The Contractor shall, at the customer's request, destroy the aforementioned documents instead of handing them over to the customer within 30 days of a corresponding request from the latter; the cost of doing so shall be borne by the customer. This shall not apply to documents containing a description of the subject matter of the agreement or the services to be performed by the Contractor (so-called "service specifying documents"), which the Contractor shall be permitted to retain for the duration of the application of both the contractually stipulated and the statutorily prescribed warranties, provided that the application thereof has not effectively been precluded.
- 11.2. All documents and objects provided to the Contractor by the customer for the purposes of the fulfilment of this agreement shall be and remain the property of the customer at all times.

12. Data Protection

- 12.1. The parties, and any third parties acting on their behalf, shall observe the currently applicable provisions of data protection legislation.

- 12.2. The customer shall ensure that the Contractor is made aware of all relevant circumstances extending beyond the scope of the applicable statutory provisions and as are required on data protection and confidentiality grounds. The customer shall be responsible for ensuring his/its compliance with legislation and regulations governing data protection and IT security.

13. Jurisdiction, Applicable Law

- 13.1. The applicable law shall be that of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 13.2. The place of jurisdiction for all disputes arising out of the contractual relationship between the parties shall be the courts sitting at the location of the Contractor's registered office.

14. Final Provisions

- 14.1. Any provisions contained in the offer which diverge from those of these General Terms and Conditions of Business shall in all cases be accorded priority over the latter. Any arrangements entered into prior to or upon the conclusion of the agreement in divergence from these General Terms and Conditions of Business must be effected in writing. This shall also apply to any agreements governing the revocation of this written form requirement.
- 14.2. The customer shall only be permitted to assign any claims he/it may have against the Contractor to third parties with the Contractor's prior written consent.
- 14.3. The customer shall be entitled to offset only uncontested or legally established claims against claims of the Contractor. The customer shall also only have a right of retention in the case of uncontested or legally established claims.
- 14.4. Should any individual provisions of these General Terms and Conditions of Business be invalid, this shall not affect the validity of the remaining provisions.