

General IT purchasing terms and conditions of MARKANT Services International GmbH

I. General Section

1. Scope of application

- (1) These general IT purchasing terms and conditions (hereinafter: "IT GTC") of MARKANT Services International GmbH (hereinafter: the "Client") are valid for all agreements between the Client and the Service Provider that involve IT services, i.e. services that require the use of information technology and/or software. This includes purchase agreements, work agreements, rental agreements and service agreements relating to hardware, software and IT services incl. consulting. The IT GTC also apply to information and consulting relating thereto and the elimination of faults.
- (2) These IT GTC apply exclusively. Conditions of the Service Provider that contradict or differ from these IT GTC shall be expressly rejected. These IT GTC are also valid if the Client accepts the deliveries/services of the Service Provider unconditionally with full knowledge of the contradictory or differing conditions of the Service Provider.

2. Conclusion of the contract

- (1) Cost estimates and offers of the Service Provider shall be made free of charge. No remuneration is granted for ideas, drawing up offers and presentations unless agreed otherwise in writing beforehand.
- (2) A contract is concluded through the unconditional acceptance of the order of the Client by the Service Provider. This acceptance is also deemed to be given if the Service Provider starts providing the service to the Client after receiving the order.
- (3) If the Service Provider accepts an order, it will issue an order confirmation to the Client.

3. Services to be provided by the Service Provider

- (1) The scope of service and delivery result from the order as well as from the offer and a separate service certificate.
- (2) All services must be duly provided in accordance with the latest technological developments at the time of performance.
- (3) The Service Provider will only provide its services with employees who have the necessary knowledge and experience. It is obligated to organise the permits, notifications, fees and other requirements required for the assignment of employees itself at its own cost and responsibility and to otherwise adhere to all labour law provisions. The right to provide instructions to its employees always remains with the Service Provider.
- (4) The contractual services are generally provided in German. The Service Provider ensures that the persons entrusted with maintenance and support tasks have a sufficient understanding of the German language.
- (5) Place of performance is Offenburg. The Service Provider provides its services at the site of the Client in Offenburg or another location specified by the Client. The Service Provider can also perform partial services such as programming, planning and documentation at a location in Germany of its choosing. The Service Provider shall adhere to the security and access regulations of the Client and countersign them at the request of the Client.

- (6) The dates and deadlines specified in the order are binding and the Service Provider shall be in default without a warning. The Service Provider will inform the Client immediately in text form if circumstances occur or become apparent to it which indicate that the agreed dates or deadlines cannot be met.
- (7) If the Service Provider is in default of performance, the Client is entitled to legal claims. The Client is entitled to claim damages in lieu of performance of services and/or to withdraw from the contract after the fruitless expiration of an appropriate period of time. In the event of a claim for damages, the Service Provider remains at liberty to show that the Client has suffered no or little damage.
- (8) The Service Provider may use subcontractors only after receiving written approval from the Client. However, the Client may not refuse the approval for unjustified reasons. If a subcontractor is used, it must act as a vicarious agent of the Service Provider.
- (9) The Client reserves the right to define amendments or additions to the performance specification at any time. If amendments or additions result in changes to the price or delivery time, the Client and Service Provider will come to a mutual agreement on corresponding changes to the contract.

4. Rights of use

- (1) The Service Provider grants the Client an exclusive right of use to all work results produced as part of the service performance that is unrestricted in time, place and content and which extends to all known types of use at the time the right was granted and to unknown types of use and the use of results. Insofar as the work results are represented, the Service Provider transfers ownership of these items to the Client upon handing them over.
- (2) The Service Provider grants a right of use that corresponds to the right of use in Paragraph (1) for work results that are not produced specifically for the Client, but this right is non-exclusive.

5. Deliveries

- (1) Deliveries are made free of charge. The Service Provider is responsible for shipping and packaging costs. Signing a delivery note only confirms the transfer of item to the responsibility of the Client, but not its completeness and freedom from defects.
- (2) The risk is transferred to the Client when the item is handed over. Section 447, Para. 1 of the German Civil Code [BGB] shall not apply.
- (3) The Service Provider must take out transport insurance.
- (4) Deliveries may also be made to European countries at the Client's request.

6. Cooperation of the Client

- (1) The Client will be involved in the fulfilment of the contract if this is contractually agreed and required. Details must be listed by the Service Provider in the offer and confirmed by the Client in the order.
- (2) Obligations to cooperate on the part of the Client must be qualified in a legal sense as responsibilities only.
- (3) The Client must be invited to take part by the Service Provider with an appropriate period of notice and with reference to the specific act of cooperation. If no request is made, the Service Provider may not invoke improper cooperation.

7. Defect rights

- (1) The following regulations apply to all types of contracts, i.e. purchase agreements, work agreements, rental agreements, agreements on the transfer of software and service agreements, if relevant. The respective special terms and conditions include details and additions (Sections II to 0).
- (2) The Service Provider's services must be free of defects in goods and title.
- (3) Unless another agreement is expressly reached on the quality of items, it is agreed that the items to be delivered and/or manufactured do not have any material or manufacturing defects and – during contractual use and the regular performance of recommended maintenance – that they essentially work in accordance with the specifications published by the manufacturer and the manuals provided with the item. Unless expressly agreed otherwise, the item does not have to be made such that it can be marketed in a certain way.
- (4) If the defects in the Service Provider's services qualify, the following defect classes will apply:

Class 1: there is a class 1 defect if the use of contractual services is ruled out in key areas, especially if production systems come to a standstill;

Class 2: there is a class 2 defect if the use of contractual services is restricted in key areas, but there is reasonable alternative for the Client;

Class 3: a class 3 defect is another defect in the contractual services.

The Client is responsible for allocating defects to a particular class in accordance with Section 315 of the German Civil Code [BGB]. The Client must inform the Service Provider of the persons responsible for allocating defects beforehand in writing.
- (5) The Client is authorised to eliminate the defect itself at the Service Provider's expense, to have the defect eliminated or to obtain a replace if the Client suffers an unreasonable disadvantage in relation to the disadvantage suffered by the Service Provider if the service cannot be performed immediately. The costs to be refunded by the Service Provider must not be disproportionate and are restricted to the amount which it would have had if it had rectified the defect itself in the time allocated for rectification. Further legal or contractual claims remain reserved.
- (6) If there is an obligation to inspect and give notice of defects in accordance with Section 377 HGB, this obligation is restricted to obvious and easily detectable defects.

8. Service, response and recovery times

- (1) The Service Provider provides service times within the normal working hours (work days 8:00 am – 6:00 pm). Saturdays are not considered to be a work day.
- (2) The Service Provider must start eliminating a
 - a) class 1 defect immediately, within two (2) hours at the latest
 - b) and a class 2 defect within six (6) hours at the latest (response time).
- (3) The parties agree to recovery times by contract. If the Service Provider specifies recovery times in its offer, they become part of the contract, even if no reference is made to them in the Service Provider's order.

9. Liability of the Service Provider

- (1) The Service Provider is liable without limitation for personal injuries it has culpably caused.
- (2) The Service Provider is liable for other damages if the damage has been caused deliberately or as a result of gross negligence by itself, its legal representatives, employees or vicarious agents.
- (3) The Service Provider is also liable for a slightly negligent breach of important contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and the compliance with which the Client regularly relies on and is entitled to rely on ("cardinal duties") in the event of a default and if there are grounds for impossibility, the assumption of procurement risks and guarantees, in these cases limited, however, to the foreseeable damage typical for the contract, but at most to the contractually agreed amount. If a maximum liability amount has not been agreed upon, ten times the contractually agreed remuneration applies as such, while ten times the annual remuneration is set for continuing obligations. The maximum liability amount will be at most 1 million euros for damage to property and 100,000 euros for financial losses.
- (4) Liability in accordance with mandatory legal standards such as the product liability law remain unaffected.

10. Liability of the Client

- (1) The Client is liable without limitation for personal injuries it has culpably caused.
- (2) The Client is liable for other damage if the damage has been caused deliberately or as a result of gross negligence by itself, its legal representatives, employees or vicarious agents.
- (3) The Client is also liable for a slightly negligent breach of important contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and the compliance with which the Client regularly relies on and is entitled to rely on ("cardinal duties"), limited, however, to the foreseeable damage typical for the contract.

11. Third-party rights / Property rights

- (1) All patents, copyrights, trade secrets, knowledge, inventions and other intellectual property which the Client has given the Service Provider access to ("MARKANT property rights") remain the sole property of the property rights holder.
- (2) All rights that are not expressly granted to the Service Provider on the basis of granting rights shall remain with the Client.
- (3) The Service Provider must take great care to ensure that third-party allegations that rights of use granted to the Client would violate the rights of this third party can be refuted. It documents its own procurement procedures with the utmost accuracy, ensures a secure transfer of rights when drafting the contract with its employees, chooses subcontractors with the utmost care, addresses any suspicion of a legal defect immediately and extensively and, upon being informed by the Client that the rights of use are being violated by a third party, it provides this information and its expertise unreservedly to clarify this issue and to defend itself against the alleged claims. If possible, it reaches agreements with the subcontractors to ensure the complete fulfilment of these obligations. If there is a legal dispute with the third party, it provides proof in the correct form based on the process type (e.g. as an affidavit or as the original certificates).

- (4) If the Service Provider clearly does not meet its obligations specified in Paragraph (1), the Service Provider must compensate the Client for the resulting damage.

12. Force Majeure

- (1) No party shall be held liable to the other party for delays in the fulfilment of contractual obligations if the delay is due to reasons beyond the control of the relevant party and could also not have been prevented by reasonable measures. This includes, for example, the action of civil or military authorities, fire, flood, epidemics, quarantine restrictions, war, riots or strikes ("force majeure"). The party whose service obligations are affected by this must inform the other party immediately of the type of force majeure and the adversely affected contractual obligations and make every reasonable effort to resume the service performance as soon as possible and reduce the impact of force majeure.

13. Remuneration

- (1) An agreed fixed price includes the complete service in accordance with this contract including all costs for materials, IT devices, wages and salaries, incidental wage costs, fees, costs of the acceptance, etc. and those not listed individually in other contract documents. Subsequent payments are ruled out if there is a fixed price. The Service Provider is responsible for any duties, taxes, levies and costs incurred for an import as part of the service provision.
- (2) If a fixed price is not agreed upon for the services of the Service Provider, the parties must reach an agreement on the remuneration rates for the services of the Service Provider. Remuneration rates specified by the Service Provider are only agreed upon if the Client has given its consent to this beforehand.
- (3) If the Service Provider does not provide its services at its site, but at a location specified by the Client, the Service Provider will also receive travel and accommodation costs. The Client will refund travel costs (car mileage allowance as per the German Travel Expenses Act, rental car from the mid-size category, 1st class rail tickets, economy class plane tickets) and accommodation costs for a mid-range hotel to the Service Provider in accordance with the actual expenses against proof.

14. Payment conditions

- (1) The Service Provider will only invoice its services to the Client upon complete performance of services unless the parties have expressly reached another agreement in text form.
- (2) All prices and additional costs apply plus the statutory value added tax valid at the time the service is performed. Invoices must contain all information relevant for the input tax deduction.
- (3) The remuneration must be paid by cheque or bank transfer no later than 30 days after the Client has received the invoice without a deduction. The Service Provider gives a discount of 3% for payments made within 14 days of the beginning of the payment period.
- (4) If the Client fails to pay by the due date, the Service Provider is entitled to the statutory rights.

15. Data protection/Data security

- (1) Both Parties and the employees, assistants and third Parties involved in performing the agreement undertake to observe the data security provisions, including after the agreement has ended. Each party shall personally ensure that the applicable provisions are complied with in their area of influence.
- (2) If the Service Provider is to process personal data of the Client within the meaning of the GDPR, the parties will reach an agreement in relation to this beforehand at the request of the Client that corresponds to the requirements of the GDPR. The same applies if access to personal data cannot be ruled out as part of inspection or maintenance work to be performed by the Service Provider.
- (3) The Service Provider will ensure the security of the data using standard security systems in accordance with the latest technological developments.

16. Confidentiality

- (1) The Party which receives the confidential information defined in paragraph (2) from the other party is required to protect this information from becoming known to third Parties in a manner and to an extent that this party normally protects in own information of a comparable type and importance, but at least to an objectively reasonable extent. The party in receipt of the confidential information may only use it for the purpose of performing its contractual obligations or to exercise contractual rights. Confidential information may only be disclosed to such persons in the party's own organisation or at sub-contractors which such persons need for the purposes of providing services and who are required to protect the confidential information. The party receiving the confidential information shall inform the other party immediately of any breach in the confidentiality obligation or of any suspicion thereof. Non-third parties within the meaning of this clause are the affiliated companies of the Parties.
- (2) "Confidential information" is all information or documents that are of a confidential nature that can be recognised from the perspective of a reasonable third party. The term "confidential information" does not, however, mean such information which
 - a) was public at the time the concluded agreement came into force,
 - b) becomes public at a later time without the involvement of the party receiving the information,
 - c) was lawfully known to the receiving party before disclosure,
 - d) was or is generally provided by the disclosing party to a third party without applying a confidentiality obligation,
 - e) the receiving party received lawfully from a third party, provided such third party was not in breach of a confidentiality obligation,
 - f) was created independently by the receiving party.
- (3) The parties will reach a separate non-disclosure agreement (NDA) at the request of a party.

17. Property transfer

If the Service Provider is liable for the transfer of tangible property, the property will ultimately be transferred to the Client after the consideration (payment) has been made in full.

18. Changes to these IT GTC

- (1) The Client may change these IT GTC during the contractual relationship if the legal standards essential for the provision or receipt of services change to the extent that an amendment to the IT GTC is required. The Client may also change the contractual agreements if this is required from a technical or arithmetical perspective due to changes in the market conditions that could not have been foreseen upon concluding the agreement and the failure to include them would seriously disturb the balance of the contractual relationship. A change is only made if substantial provisions of the contractual relationship (especially the nature and scope of the services, term, periods of notice) are not affected by this change. The Client will only compensate for changes without gaining any further advantage.
- (2) The Service Provider will be informed of all changes in writing or in text form. The Service Provider will be informed of individual changes individually in the notification and these changes will take effect six (6) weeks after the notification unless a later date has been expressly specified. If changes are made to the disadvantage of the Service Provider, the changes are deemed to be approved if the Service Provider does not object to the individual or all changes in writing. The objection must be received by the Client within six (6) weeks of receipt the notification. The Client will be informed of these consequences separately in the notification. In the event of an adjustment to mandatory law, an adjustment of the GTC to the legal framework conditions specified in Paragraph (1), Sentence 1 does not apply as a change to the disadvantage of the Service Provider. If an objection is lodged within the deadline and in the correct form, the contract will be continued on the same terms.

19. Other provisions

- (1) Without prior approval from the Client, the Service Provider is prohibited from providing the Client as a reference or from mentioning the conclusion of a contract with the Client for promotional purposes in any other way.
- (2) The contract language is German. All correspondence and other documents and records must be written in German. If applicable, the Service Provider must have translations of documents or records in foreign languages produced at its own cost. If the parties have also expressly authorised another language in the contract, German will have priority over the other language in terms of the interpretation of the contract.
- (3) There are no verbal side agreements. Amendments and additions to the agreement shall only be valid if they are in written form; this also applies to a waiver of this written form requirement.
- (4) No party may assign the rights from this agreement to third parties without the prior written consent of the other party. However consent to this may not be refused if it lacks a legitimate interest Consent is not required for the assignment of payment claims.
- (5) The Service Provider is only entitled to offset or exercise a right of withholding against undisputed claims or claims which have been validated by due legal process.
- (6) The Service Provider is entitled to assert a right of retention or a right to refuse performance only for undisputed or legally effective counterclaims from the same contractual relationship.
- (7) The laws of the Federal Republic of Germany shall apply to the exclusion of international private law and of the United Nations Vienna Convention on Contracts for the International Sale of Goods dated 11.04.1980 (UN Sales Convention).
- (8) If the Service Provider is a merchant, a legal entity under public law or a special fund under public law, Offenburg is the sole jurisdiction for all disputes from the contract. The

same applies if the customer does not have a general jurisdiction in Germany or the domicile or habitual residence are not known at the time the action is filed.

II. Special terms and conditions for purchase agreements

The following special terms and conditions for purchase agreements apply to all contracts between the Client and Service Provider that partly or solely include a purchase agreement. If there are discrepancies with the regulations in the General Section, these special terms and conditions have priority.

20. Claims for defects

- (1) Section 7, Paragraph (4) does not apply.
- (2) By derogation from Section 440 of the German Civil Code [BGB], a rectification shall be regarded as failed after one unsuccessful attempt.
- (3) The period of limitation for defect claims (Section 438, Para. 1(3) of the German Civil Code [BGB]) will be extended to three years. The warranty period for services that have been provided for supplementary performance is at least six months.
- (4) The period of limitation starts at the time the purchased item(s) are handed over to the Client.

The legal regulations also apply to defects in the purchased item.

III. Special terms and conditions for work agreements

The following special terms and conditions for work agreements apply to all contracts between the Client and Service Provider that partly or solely include a work agreement. If there are discrepancies with the regulations in the General Section, these special terms and conditions have priority.

21. Acceptance

- (1) All acceptances of work and services are made in writing using an acceptance report specified by the Client. Acceptance by means of implied actions such as the use of the work is not possible; the acceptance must always be declared exclusively by the Client. The acceptance criteria are agreed contractually by the parties.
- (2) If several steps are planned to assess the functionality of the Service Provider's services, only the final acceptance is deemed as acceptance within the meaning of Section 640 of the German Civil Code [BGB]. Even if prior verifications are referred to as acceptance, they do not constitute partial acceptance in a legal sense. However, partial acceptance can be expressly agreed to.
- (3) The Client may not decline acceptance due to insignificant defects, but the Service Provider must start to eliminate the defect immediately after being informed thereof.

22. Claims for defects

- (1) The limitation period for defect claims starts on the acceptance date.
- (2) A rectification shall be regarded as failed after one unsuccessful attempt.

IV. Special terms and conditions for rental agreements

The following special terms and conditions for rental agreements apply to all contracts between the Client and Service Provider that partly or solely include a rental agreement. If there are discrepancies with the regulations in the General Section, these special terms and conditions have priority.

23. No price adjustment

Changes may not be made to the rent (price adjustments) during the term of a rental agreement.

Special terms and conditions for software use

The following special terms and conditions for software use are valid for all agreements between the Client and Service Provider that partially or solely involve the use of software by the Client, regardless of whether the contract is to be classified legally as a purchase agreement, rental agreement or a contract sui generis. If there are discrepancies with the regulations in the General Section, these special terms and conditions have priority. They have priority over any relevant regulations of the special terms and conditions for purchase agreements and the special terms and conditions for rental agreements.

24. Transfer of software

- (1) Unless otherwise agreed, software is transferred to the Client onto customary data carriers in machine-readable object code along with the user documentation or made available or sent to the Client electronically.
- (2) If the Client does not acquire a company-wide licence, it may reorder further licences for two years after the delivery of an initial licence at the list price valid at the time less the discount agreed upon initial delivery.

25. Scope of use

- (1) The Client is authorised to use the transferred software to provide services for its retail partners and industry partners (suppliers). The rights granted to the Client in accordance with the contract include all uses of software that are required for this.
- (2) The software may be run or used by the Client, the parent company of the Client, another company in which the parent company has a direct or indirect holding or a third-party company (e.g. as outsourcing or hosting). If the software is run and used by a third-party company, the Client will inform the Service Provider of this in writing in advance and submit the declaration of the third party that the software will be kept secret and only used for the purposes of the Client on request.
- (3) The Client may hand over the software to third parties to eliminate the errors. It may transfer the software along with the written documents to third parties for the training of its employees.
- (4) The Client may create backup copies that correspond to utilisation in accordance with the latest technological developments.
- (5) The Client may print out and copy the user manual and other information.

26. Hardware and software support

- (1) For the duration of three months from time the contract is concluded, the Service Provider must, at the request of the client, reach an agreement on further services (e.g. installation, setting parameters, training) and an agreement on hardware and software support.
- (2) The Service Provider develops the software in terms of quality and modernity, adapts it to the amended requirements and eliminates faults as part of the software maintenance agreement. The Service Provider helps the Client with information on how to prevent, eliminate and avoid errors.

- (3) The Client acquires the same rights for amendments and additions to standard software which the Service Provider creates for the Client as those for standard software, but these rights are exclusive.
- (4) Amendments and additions must be made in a way that ensures all the functions are maintained even if the standard software changes. If this is not possible, the Service Provider will carry out the necessary changes at its own cost during the term of a software maintenance agreement.

27. Software escrow

- (1) If the Service Provider is the manufacturer of the software or its European or German branch, it stores the existing sources of contract software (source code in a defined programming language, comments, flow charts, documentation) together with licence keys for the temporally unrestricted use of contract software (referred to jointly as the "sources") in accordance with a standard software escrow agreement with a notary or a specialised escrow company.
- (2) The Service Provider must keep the sources up-to-date. The current status is the status at the time it is used by the Client or it is installed on its systems.
- (3) The escrow fees including the costs for the documentation are borne by the Client and are not included in the fees specified in this contract.
- (4) The right of the Client to use source code is stipulated in the software escrow agreement. This authorisation is part of the usage authorisation granted to the Client and as such is already effective upon conclusion of the contract.
- (5) A software vendor that is not affiliated with the manufacturer under corporate law is not obliged to store the current sources of the contract software. The above Paragraphs (1) to (4) do not apply in this case.

28. Claims for defects

- (1) If the Service Provider is liable to provide software, the Client recognises that it is not possible in accordance with the latest technological developments to develop complex software products in a way that means they are completely error-free. The required quality for software to be provided by the Service Provider is not designed so that no bugs or interruptions occur, but instead so that the programs do not have errors which have a considerable impact on their usability.

Special terms and conditions for service agreements

The following special terms and conditions for service agreements apply to all contracts between the Client and Service Provider that partly or solely include a service agreement. If there are discrepancies with the regulations in the General Section, these special terms and conditions have priority.

29. No price adjustment

- (1) If the provision of a service by the Service Provider is agreed for a particular period (continuing obligation), Section 23. shall apply accordingly.

30. Inadequate service provision

- (1) If the Service Provider does not provide the required service in accordance with the contract and is responsible for this, it must provide the service within a reasonable period in accordance with the contract without any additional costs for the Client. Section 251 of the German Civil Code [BGB] is applied.
- (2) If the contractual provision of the service is largely not possible within a reasonable grace period for reasons that the Service Provider is responsible for, the Client is entitled to terminate the contract without notice.

MARKANT Services International GmbH- Hanns-Martin-Schleyer-Str. 2 - 77656 Offenburg - Germany
Tel.: +49 781 616-0 - Fax: +49 781 616-166 – info@de.markant.com
Managing Director: Jens Heiderich - Commercial register: Freiburg Local Court, HRB-471049

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