

## **General Terms and Conditions of Delivery and Service of be partner GmbH, as of December 2019**

### **I. Scope of application**

1. These general terms and conditions of delivery and service apply to all fields of activity of be partner GmbH. These general terms and conditions of delivery and payment therefore apply to consultancy services as well as for works and the supply of items and software.
2. Our relationship with the customer is governed exclusively by these general terms and conditions of delivery and service. They also apply to all future transactions as well as to all business contacts with the customer such as carrying out contractual negotiations or the initiation of a contract even if they are not expressly agreed upon again or if no express reference is made to them once again. The validity of the customer's general terms and conditions of ordering and purchasing are expressly repudiated.
3. If, in an individual case, obligations are established vis-à-vis persons or companies, where these persons or companies are not to be the actual contractual party, they will then be subject to the liability provisions contained in these general terms and conditions of delivery and service if these general terms and conditions of delivery and service were included in relation to the third party at the time that the said obligation was established. This will particularly apply where the third parties, at the time the obligation was established, were made aware or already had prior knowledge of these general terms and conditions of delivery and service .
4. Accepting these services and deliveries by the customer is considered as recognition of the validity of these general terms and conditions of delivery and service.

### **II. Contract conclusion**

1. Our offers are binding four weeks after submission of a quotation unless otherwise agreed upon.
2. We are bound to a contract only if it was confirmed in writing by us or we commence with the execution of the order.

### **III. Scope of delivery and performance, contractual performance periods**

1. For the scope of our delivery or performance, our written offer or our order confirmation is decisive. Additional agreements and amendments require our written confirmation. If our offer or order confirmation was based on the details provided by the customer (data, figures, images, performance specifications, functional specifications etc.), our offer is only binding if these details were correct. If, following contractual conclusion, it transpires that the order cannot be executed in accordance with the customer's specifications, we are entitled to rescind the contract if and to the extent that the customer is not ready to accept our proposed alternative solution and, where necessary, to assume actual additional costs incurred.
2. Delivery and performance periods and dates always constitute the best possible information but are generally non-binding. The commencement of the period of delivery and adherence to the delivery dates require that the customer cooperates duly and within the time limits, provides all documents and makes any prepayments agreed upon.
3. We will not be in default in respect of delays in service provision if we or our vicarious agents were merely culpable of negligence. We will not be in default in cases of force majeure or other extraordinary circumstances which arise due to no fault of our own. In this case, we are also entitled to rescind the contract if we are already in default.
4. If we are contractually obliged to render advanced performance, we may refuse to fulfil this obligation if, following the conclusion of contract, our right to counter-performance appears at risk due to the customer's inability to fulfil its contractual duties. This is particularly the case if our entitlement to counter-performance is jeopardised by the customer's unsatisfactory financial position or other impediments to performance are imminent e.g. export or import bans, war, insolvency of suppliers or absence of necessary workers due to illness.

#### **IV. Customer's duties of cooperation**

1. The customer is required to support us and our employees to a reasonable, usual extent. If our employees have to provide project-related works or services at the customer's premises, we may request for support in the form of provision of work rooms and work stations equipped with computers and telephones. The cost will be borne by the customer.
2. Materials, information and data which we need in order to provide our services are to be provided by the customer. Data and data storage devices must be technically faultless. If there are special legal or operational safety regulations which are applicable at the customer's premises, the customer must inform us about this prior to us providing our service.

3. The customer has no authority to instruct to our employees regarding the precise form of service provision are excluded unless instructions are required in connection with safety requirements and work regulations at the customer's premises. Instructions regarding individual questions regarding the services we are to provide or the work we have to do are to be given to the contact persons we have appointed for the project and not to the employees whom we have entrusted with the task. We always make independent decisions regarding the necessary measures within the framework of our performance obligations.

## **V. Prices**

1. Our prices are net. For services, the price refers to service provision at the agreed upon place of performance. When invoicing, VAT will be added in its respective legal amount.
2. Allowances and travelling costs will be separately invoiced if nothing to the contrary has been agreed upon. Allowances shall be reimbursed based on documented reasonable and usual costs thereof. A remuneration of EUR 0.30 per km plus VAT is considered as agreed upon. In justified cases travelling costs may be reimbursed according to such reasonable, usual costs as incurred and documented (e.g. train, plane etc.).

## **VI. Terms and conditions of payment**

1. If nothing to the contrary has been contractually agreed upon, our receivables will be due when delivery has been made or when our service has been fully rendered. General payment terms are 30 days after receiving the invoice. If we deliver or provide services in definable parts, we are entitled to request a corresponding part of the remuneration for each part.
2. Without express agreement, the customer is not entitled to make deductions.
3. Our claims for remuneration can only be offset by uncontested claims that are established as final and absolute. The same applies to the exercising of a right of retention. The customer is only authorized to exercise a right of retention if it is based on the same contractual relationship.
4. The assignment of claims against us by the customer requires our prior approval which we can decline for cause. Accordingly the same concerns our claims against the customer.

## VII. Liability for defects and general liability

1. The customer's claim for supplementary performance, reduction of price, contractual rescission and compensation exists only according to the following provisions:
  - a. If the customer accepts poor performance or a defective item, although it knows of the defect, it is only entitled to supplementary performance, contractual rescission, reduction of price or compensation if, at the time of acceptance, it reserves these rights due to the defect.
  - b. The warranty period for our deliveries and services is one year from the passage of risk.
2. If we fail to render due service or delivery, do so late or if we render defective contractual performance, the customer can only demand compensation for a period of 2 year as from passing of risk:
  - a. in the case of death or personal injury resulting from our intentional or negligent breach of duty or an intentional or negligent breach of duty by one of our legal representatives or vicarious agents;
  - b. for other damages which are based on an intentional or grossly negligent breach of duty on our part or on an intentional or grossly negligent breach of duty by one of our legal representatives, executive staff or vicarious agents or on the intentional or negligent breach of essential contractual obligations (cardinal duties) on our part or the intentional or negligent breach of essential contractual obligations (cardinal duties) by one of our legal representatives, executive staff or vicarious agents;
  - c. for damages which fall within the scope of protection of a guarantee issued by us (assurance) or a guarantee of quality or guarantee of durability.
3. In case of simple negligent breach of an essential contractual duty, liability is limited to the extent of the damage that may be typically foreseeable for this type of contract. Excluded herefrom are damages due to injury of life, body or health where the liability is not limited.
4. Claims for compensation against us due to mandatory liability for example according to the Product Liability Act will not be affected by the preceding regulations.
5. If third parties are to be commissioned or involved in the initiation or handling of the contractual obligation between the parties, the above mentioned warranty and liability limitations apply also in favour of third parties.

### **VIII. Special regulations for performance-based contracts**

1. If we are to achieve a particular result e.g. the creation of a work or particular software, the client is obliged to issue written acceptance that our contractual services have been rendered upon corresponding notification of completion on our part.
2. If acceptance is delayed and it is not our fault, our service will be considered as accepted upon lapse of seven calendar days since notification of completion.

### **IX. Special regulations for service agreements**

1. A service agreement can only be terminated within a termination period of 1 month for each party.
2. An important reason is established particularly if:
  - a. duties, especially the duty to cooperate, which are to be fulfilled within the contractually agreed upon periods are not fulfilled despite setting of deadlines with reference to the existing right to terminate,
  - b. obligations to maintain secrecy are violated,
  - c. essential contractual components are not fulfilled, or despite an additional period of grace are not completely fulfilled.
3. The termination is to be issued in writing.

### **X. Non-disclosure obligations**

1. We and the customer (“the parties”) undertake to maintain secrecy during the period of the contract regarding information which we become aware of in connection with the contract which is defined as confidential or is considered as constituting business or operating secrets due to other circumstances. We will neither record nor forward the information to third parties or utilise it in any way if this has not been approved of or offered for the achievement of the contractual goal. This obligation to maintain secrecy will endure for another five years after complete fulfilment or termination of the contract.
2. Excluded herefrom is information
  - a. which a party was aware of prior to commencement of contract negotiations or which was given to third parties and was not classified as confidential if this does not violate their confidentiality obligations;
  - b. which the parties have developed independently of each other;

- c. which is or becomes public through no fault of the parties or;
  - d. which is to be disclosed due to legal obligations or must be disclosed by way of an official or judicial order.
3. In the latter case, the disclosing party has to immediately inform the other party prior to disclosure. Further legal obligations regarding confidentiality remain unaffected.

#### **XI. Miscellaneous**

1. Place of fulfilment and legal venue for all disputes arising from the contract between the parties is Germany. Irrespective of this, the Parties are also entitled to make a claim on each other at the customer's general legal venue.
2. The customer is aware that data pertaining to the business arrangement, including personal data, must, within the normal course of business activities, be saved and processed and forwarded to third parties. The customer consents to this data compilation and processing.
3. If any provision contained in these general terms and conditions of delivery and payment or a clause within the framework of other agreements is or becomes ineffective, the effectiveness of all other clauses or agreements will not be affected.
4. German law applies to contractual and other legal relationships with our customers to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.