

1 Remuneration, Payments, Provisos, Premature Termination, Deadlines

1.1 In the absence of an agreement to the contrary, remuneration is calculated on the basis of work performed and in accordance with the Provider's prices generally applicable at the time of conclusion of contract. All prices stated are net prices exclusive of statutory value-added tax.

The Provider may submit invoices on a monthly basis. If services are remunerated on the basis of work performed, the Provider shall document the nature and duration of activities and submit this documentation along with the invoice.

1.2 All invoices must strictly be paid at the latest within 14 calendar days after receipt, free of charge to the point of payment and without deduction.

1.3 The Customer can only offset undisputed or legally determined claims or withhold payments on account of such claims.

As the result of defects the Customer is entitled to withhold payment only in a part which is proportionate to the defect and only if the defect can be shown without doubt. Item 4.1 applies accordingly. The Customer has no right to withhold payment if his claim for defects is superannuated.

1.4 The title to the goods and services and the rights to be granted to the services are retained by the Provider until complete payment is made of the remuneration owed, against which justified withholdings for claims for defects in accordance with 1.3 paragraph 2 will be taken into account. The Provider furthermore retains title until fulfillment of all his claims under the business relationship with the customer.

The Provider is entitled, for the duration of a period of delay in payment by the Customer, to forbid further use of the goods and services. This right may be asserted by the Provider only for a reasonable period of time; this is generally 6 months at most. This does not constitute withdrawal from the contract. § 449 (2) of the German Civil Code (BGB) remains unaffected.

If the Customer or his customers return goods or the results of services provided, acceptance of such does not constitute withdrawal by the Provider unless withdrawal has been expressly declared by him. The same applies for the seizure of goods or rights to such goods by the Provider.

The Customer is allowed, as a reseller only, to resell in the normal course of business and under the proviso that the Customer's claims against his customers in connection with the resale are effectively assigned to the Provider by the Customer, and that the Customer transfers title to its customers subject to payment. With conclusion of contract the Customer assigns to the Provider as security his claims against his customers in connection with such sales, and the Provider at the same time accepts this assignment.

To the extent that the value of the Provider's security interests exceeds the amount of the secured claims by more than 20%, the Provider shall, at the Customer's request, release a corresponding portion of the security interests.

1.5 If the Customer is economically unable to fulfill his duties towards the Provider, the Provider may, without notice, terminate existing exchange agreements with the Customer through withdrawal or continuing obligations; including if the Customer files for insolvency. § 321 of the German Civil Code (BGB) und § 112 of the German Insolvency Act (InsO) remain unaffected. The Customer will inform the Provider in writing in good time about any impending inability to pay.

1.6 Fixed performance deadlines shall be agreed exclusively in documented form. Agreement of a fixed performance deadline is subject to the proviso that the Provider receives the goods and services of its respective suppliers in good time and according to contract.

2 Collaboration, Duties of Cooperation, Confidentiality

2.1 The Customer and the Provider shall each nominate a responsible contact person. In the absence of an agreement to the contrary, communication between the Customer and the Provider shall take place through these contact persons. The contact persons must promptly obtain all decisions required in connection with execution of the contract. The decisions must be documented on a binding basis.

2.2 The Customer is obliged to support the Provider to the necessary extent and in his sphere of operations to create all the conditions required for orderly execution of the contract. For this purpose he shall in particular provide all necessary information and, if required, allow remote access to the Customer system. The Customer shall furthermore ensure that qualified personnel are available to support the Provider.

To the extent that it is agreed in the contract that services can be performed at the Customer site, the Customer shall, on request by the Provider, make available sufficient workstations and working materials free of charge.

2.3 The Customer must promptly report all defects in writing, in a comprehensive and detailed form, providing all information of use for defect detection and analysis. In particular, the work steps which led to the occurrence of the defect, the nature of the defect and the effects of the defect should be stated.

2.4 The contractual partners are obliged not to divulge business or trade secrets or other information designated as confidential which become known in connection with execution of the contract. Such information may be divulged to persons who are not involved in the conclusion, execution or processing of the contract only with the written agreement of the other contractual partner. In the absence of an agreement to the contrary, this obligation ceases at the end of five years after the relevant information becomes known but, in the case of continuing obligations, not before their end.

The contractual partners shall also impose these obligations on their employees and any third parties who might be involved.

2.5 The contractual partners are aware that electronic and unencrypted communication (e.g., by e-mail) involves security risks. When using this type of communication they shall therefore assert no claims based on an absence of encryption except in cases where an encryption was agreed beforehand.

3 Disruption of Performance

3.1 If deadline observance is prejudiced by a cause which is beyond the Provider's control, including strikes and lockouts (disruption), deadlines shall be extended by the duration of the disruption; if necessary including a reasonable restart period. Each contractual partner must inform the other about the cause of a disruption occurring in his respective area, and promptly report on the duration of the disruption.

3.2 If costs are increased due to a disruption, the Provider may also demand remuneration for the additional expenses, unless the disruption and its cause are beyond the customer's control and area of responsibility.

3.3 If, as the result of improper performance by the Provider, the Customer is entitled to withdraw from the contract and/or demand damages in lieu of performance or asserts this, the Customer shall on request by the Provider provide a written declaration within a reasonable time as to whether he asserts such rights or still wishes provision of services. In the case of withdrawal, the Customer must reimburse the Provider for the value of already existing usage possibilities; the same applies for deterioration as the result of normal conditions of use.

Should the Provider fall behind with the provision of services, then compensation for damages and reimbursement of expenses on the part of the Customer is limited to 0.5% of the price for that part of the service which cannot be used because of the delay. The liability for delay is limited in total to 5% of this price. This does not apply if delay is the result of gross negligence or willful intent by the Provider.

3.4 In the event of a delay in performance the Customer has a right of withdrawal within the parameters of the provisions of the law only if the Provider is responsible for the delay. If, as the result of delay, the Customer makes a justifiable claim for compensation for damages or expense in lieu of performance, he is entitled to demand for each full week of the delay 1% of the price of that part of the service which cannot be used because of the delay, but with a maximum of 10% of this price. Item 3.3 paragraph 2 sentence 3 applies accordingly.

4 Defects of Quality and Compensation

4.1 In the event of minor variance in the Provider's services from the contractually agreed conditions, claims for defects of quality shall not be recognized.

Claims relating to defects shall also not be recognized in cases of excessive or improper use, normal wear, failure of components in the system environment, software errors that cannot be reproduced or otherwise proven by the customer, or damage caused by special outside influences which are not provided for in the contract. This also applies in cases of subsequent modification or repair by the Customer or third parties, unless this does not make analysis and correction of the defect more difficult.

Section 6 applies on a supplementary basis for claims for damages or reimbursement of expenses.

4.2 Claims for defects of quality lapse within one year of the start of the statutory period of limitation. The statutory time limits for a right of recourse in accordance with § 478 BGB remain unaffected. Where the law according to § 438 (1) No. 2 BGB (buildings and building materials) stipulates more extended deadlines, this also applies in cases of willful or grossly negligent breach of duty by the Provider, fraudulent concealment of a defect as well as in cases of injury to life, limb or health.

Processing a notification of defect of quality from the Customer by the Provider leads to a suspension of the period of limitation only insofar as the legal requirements for this are fulfilled. This does not result in a restart of the period of limitation. Supplementary performance (new delivery or rectification of defects) affects the period of limitation only with regard to the defect triggering supplementary performance.

4.3 The Provider is entitled to demand reimbursement for work carried out to the extent that:

- He starts work on the basis of a notification without a defect existing, unless the Customer was unable with reasonable effort to detect that there was no defect, or
- a notified error cannot be reproduced or otherwise proven by the Customer to be a defect, or
- additional work is required because of improper fulfillment of the customer's duties (see also 2.2, 2.3 and 5.2).

5 Defects of Title

5.1 For infringements of third-party rights through his service the Provider is liable only to the extent that the service is used in accordance with contract and particularly in the contractually stipulated application environment.

The Provider is liable for infringements of third-party rights only within the European Union and the European Economic Area, and at the place of contractually stipulated use of the service. Item 4.1 sentence 1 applies accordingly.

5.2 Should a third party pursue a claim against the Customer that the Provider's service infringes its rights, the Customer will promptly inform the Provider. The Provider and where relevant his suppliers are entitled, but not obliged, to defend themselves so far as legally permissible at their own expense against the claims pursued.

The Customer is not entitled to recognize third-party claims before giving the Provider a reasonable opportunity to avert the third-party claims in another way.

5.3 If a service by the Provider infringes third-party rights, the Provider will at his own choice and expense:

- Obtain for the Customer the right to use the service, or
- design the service in such a way that no rights are infringed, or
- withdraw the service with reimbursement of payment made by the Customer for it (less reasonable compensation for use) if the Provider is unable to achieve any other remedy with reasonable time and effort.

Reasonable consideration will thereby be given to the customer's interests.

5.4 Claims by the Customer for defects of title lapse in accordance with 4.2. For claims by the Customer for damage compensation and reimbursement of expenses, section 6 applies on a supplementary basis; for additional work by the Provider, 4.3 applies accordingly.

6 General Liability of the Provider

6.1 The Provider is always liable to the customer:

- For damage caused by him or his legal representatives or assistants through willful intent or gross negligence;
- in accordance with the Product Liability Act;
- for damages resulting from injury to life, limb or health for which the Provider, his legal representatives or assistants are responsible.

6.2 The Provider is not liable in the case of minor negligence unless it breaches a major contractual obligation (cardinal obligation).

In the case of material or financial losses, such liability is limited to foreseeable losses typical of the contract. This also applies to lost profit and an absence of savings. Liability for other remote consequential damages is excluded.

For an individual case of loss or damages, liability is limited to the contract value or, in the case of regular payments, to the amount of remuneration per contract year, but to not less than €50,000. With regard to the period of limitation, 4.2 applies accordingly. Upon conclusion of contract the parties may agree further liability against separate payment. Liability in accordance with 6.1 remains unaffected by this paragraph.

On a supplementary and overriding basis the Provider's liability due to minor negligence under the respective contract and its execution is limited in total for compensation for damages and reimbursement of expenses – regardless of the legal grounds – to the percentage stipulated in that contract of the remuneration agreed on conclusion of contract. Liability in accordance with 6.1 b) remains unaffected by this paragraph.

- 6.3 Under a declaration of guarantee the Provider is liable only for damage compensation if this liability is expressly stated in the guarantee. In the case of minor negligence such liability is subject to the limitations in accordance with 6.2.
- 6.4 In the event of data loss, the Provider is liable only for the outlay required for restoration of the data through proper data backup by the customer. In the case of minor negligence on the part of the Provider, such liability arises only if the Customer carried out proper data backup immediately prior to the action leading to the data loss.
- 6.5 For expense reimbursement claims and other liability claims by the Customer against the Provider, 6.1 to 6.4 apply accordingly.

7 Miscellaneous

- 7.1 The Customer shall be responsible for observing the import and export regulations applicable for the supply of goods and services, particularly those of the USA. In the case of cross-border supply of goods or services, the Customer shall bear the cost of applicable customs duties, fees and other charges. In the absence of an agreement to the contrary, the Customer shall be responsible for handling statutory or official procedures in connection with the cross-border supply of goods and services.
- 7.2 German law applies. Application of UN purchasing law is excluded.
- 7.3 The Provider offers his services on the basis of his General Terms and Conditions of Business (AGB). The Customer's business terms do not apply even if the Provider does not expressly countermand them.
Acceptance of services by the Customer constitutes recognition of the Provider's AGB while waiving the Customer's business terms.
Other terms and conditions are binding only if the Provider recognizes them in writing; the Provider's AGB then apply on a supplementary basis.
The German version of CONET'S General Terms and Conditions as well as Contractual Terms shall prevail.
- 7.4 Changes and amendments to this contract must be agreed in writing.
- 7.5 The place of jurisdiction for disputes with a merchant, legal entity under public law or special fund under public law is the place of the registered offices of the Provider. The Provider may also pursue legal action against the Customer in the place of the latter's registered offices.