

**CONET – CONTRACTUAL TERMS FOR THE PRODUCTION OF SOFTWARE (VES)
for Business Customers (Entrepreneurs, Legal Entities under Public Law
or Special Funds under Public Law)**

CONET

Applicable in Connection with CONET's General Terms and Conditions (AV)

1 Object of the Contract

- 1.1 The Provider shall produce software for the Customer in accordance with the specifications (see 2.2) upon which the contract is based.
- 1.2 The copy of the software to be supplied to the Customer by the Provider contains only the object code.
- 1.3 The software shall be handed over together with operating instructions (user documentation or online help). In the absence of an agreement to the contrary, the operating instructions will be in the language of the user interface of the software.
The supply or creation of further documentation requires a separate written agreement, particularly with regard to content and scope.
- 1.4 The Provider shall produce the software and operating instructions (together "performance objects") in accordance with the principles of orderly professional conduct.
- 1.5 Analysis, planning, consulting and training services are not the object of this contract and are not owed by the Provider.

2 Collaboration between the Contracting Partners

- 2.1 The Customer shall inform the Provider of his technical and functional requirements of the software fully and in detail, and shall supply the Provider in good time with all documents, information and data necessary for production of the software.
- 2.2 The specifications will be based on the Customer's technical and functional requirements as communicated by him. The specifications describe the characteristics of the software according to contract. Modifications to the specifications shall take place only in accordance with Section 3. Analysis, planning and consulting work, even in connection with the specifications, shall be carried out by the Provider only on the basis of a separate contract (see also 1.5).
- 2.3 The Provider shall call in the project manager designated by the Customer as contact person (item 2.1 of CONET's General Terms and Conditions - AV) if required for the purpose of execution of the contract. The decisions of the contact person must be documented in writing.
- 2.4 The Customer is not entitled to demand performance on his premises.

3 Procedure for Changes of Specifications

Either contractual partner may propose changes to the specifications (see 2.2) and provision of services. For this purpose the following procedure is agreed:

- 3.1 The Provider shall look at a modification proposal from the Customer and inform him as to whether an extensive examination is required.
- 3.2 If an extensive examination of the modification proposal is required, the Provider shall inform the Customer within a reasonable time about the period of time likely to be required for this and about remuneration. An examination will then be commissioned or declined by the Customer within a reasonable time.
- 3.3 If an extensive examination of the modification proposal is not required or when the commissioned examination is completed, the Provider shall either:
 - a) Inform the Customer that the modification proposal cannot be carried out by the Provider within the parameters of the agreed work, or
 - b) Make a written offer to the Customer for execution of the modifications (modification offer). The modification offer will especially contain the modifications to the specifications and their effects on the performance period, the planned deadlines and the remuneration.
- 3.4 Within the stipulated acceptance period (period of validity) the Customer shall either decline the modification offer or declare his acceptance in writing or in another form agreed between the contractual partners.
- 3.5 The Provider and the Customer may agree that services affected by a modification proposal be interrupted until completion of the examination or – if a modification offer has been made – until the end of the period of validity.
- 3.6 Until acceptance of the modification offer, work will be continued on the basis of current contractual agreements. The performance periods will be extended by the number of calendar days on which work is interrupted in connection with the modification proposal or its examination. The Provider may demand adequate remuneration for the duration of the interruption except to the extent that the employees affected by the interruption can be put to work by the Provider elsewhere or the Provider maliciously fails to do so.
- 3.7 In the absence of an agreement to the contrary, the modification procedure will on request by the Provider be documented in writing or through text input to a form of the Provider. Every modification of the work specifications must be agreed in writing or in another form stipulated by the contractual partners.
- 3.8 For modification proposals by the Provider, items 3.2 to 3.7 apply accordingly.
- 3.9 Modification proposals must be addressed to the project manager (2.3) of the contractual partner.

4 Rights of Use and Protection against Unauthorized Use

- 4.1 Upon full payment of the remuneration owed, the Provider grants the Customer a non-exclusive right to use the objects of performance on a lasting basis in his own company for the contractually stipulated purposes. The right granted to the Customer for the services supplied by the Provider may be transferred by the Customer to third parties only under full surrender of his own rights.
- 4.2 All rights are otherwise retained by the Provider.
- 4.3 The Provider is entitled to take appropriate technical measures to protect against non-contractual use. Use of the software on an alternate or successor configuration may not be substantially impaired as a result of this.
- 4.4 The Provider is entitled to revoke the Customer's utilization right if the Customer substantially infringes utilization restrictions or other regulations for protection against unauthorized use (see also 5.8). The Provider shall allow the Customer a period of grace for remedial action beforehand. In case of recurrences or special circumstances which, after weighing the interests of both sides, justify immediate revocation, the Provider may declare revocation without a period of grace. After revocation, cessation of use must be confirmed by the Customer to the Provider in writing.

5 Customer Obligations

- 5.1 The Customer must ensure that qualified personnel are available to accompany the project for Provider support and, from handover, to oversee quality testing (7.1) and use of the software.

- 5.2 The Customer shall on request by the Provider make available suitable test cases and data for quality testing in machine-readable form. If the Customer fails to provide such test cases and data, the Provider can choose and produce suitable test cases itself in return for additional remuneration.
- 5.3 The Customer is obligated to download software provided for this purpose after notification of availability.
- 5.4 The Customer must report defects in particular according to item 2.3 of CONET's General Terms and Conditions (AV). In the absence of an agreement to the contrary, the relevant forms and procedures of the Provider will be used for this purpose.
- 5.5 The Customer must support the Provider insofar as necessary in correcting defects, and in particular allow remote access to the Customer system and provide other analysis material.
- 5.6 The Customer shall promptly inform the Provider of changes in the conditions of use after handover.
- 5.7 In the absence of an agreement to the contrary, all documents, information and data supplied to the Provider shall be additionally kept by the Customer in such a way that they can be replaced or reconstructed in the event of damage to or loss of such documents or data storage media.
- 5.8 The Customer may not take any action which could aid and abet unauthorized use. In particular, he may not attempt to decompile programs unless entitled to do so. The Customer shall promptly inform the Provider if it comes to his attention that unauthorized access is threatened or has taken place in his domain.

6 Handover and Passing of Risk

- 6.1 In the absence of an agreement to the contrary, the Provider may also hand over the objects of performance to the Customer by means of electronic transmission or through preparing for download. If the objects of performance are to be supplied by download, then the Provider shall notify the Customer of availability.
- 6.2 If the performance objects are electronically transmitted, the risk of accidental loss or deterioration passes to the Customer on receipt by the telecommunications service provider commissioned by the Provider to pass on the transmission.
- 6.3 If the performance objects are provided for downloading, the risk of accidental loss or deterioration passes to the Customer upon being made available and the Customer being informed of this.

7 Quality Testing and Claims for Defects by the Customer

- 7.1 All performance objects handed over, particularly software or operable parts of the software which are agreed as partial deliveries, shall be examined for defects by the Customer forthwith – as a general rule within 14 calendar days – particularly to ensure the contractually agreed quality (quality testing). For this purpose, the Customer will use test cases and data practically suited to the software. The Provider may coordinate with the Customer with regard to test procedures, and accompany and support the quality testing on site.
- 7.2 During and after quality testing any defects shall be reported by the Customer in proper form without delay and at the latest within seven calendar days after they come to his attention (5.4).
- 7.3 The commercial duty of examination and notification of defects in accordance with § 377 of the German Commercial Code (HGB) applies on a supplementary basis.
- 7.4 The Provider guarantees that, if used in accordance with the contract, the objects of performance comply with the contractual conditions. For defects of quality, Section 4 of CONET's General Terms and Conditions (AV) applies in particular. For defects of title, Section 5 of CONET's AV applies in particular.
- 7.5 The Customer has claims for defects only if reported defects can be reproduced or otherwise proven by the Customer. For notification of defects, 5.4, 7.2 and 7.3 apply in particular.
- 7.6 If the Customer has justified claims for defects, he is initially entitled only to subsequent performance within a reasonable time. At the choice of the Provider, subsequent performance consists either of repair or delivery of a new object of performance. In its choice, the Provider will take reasonable account of the Customer's interests.
- 7.7 If subsequent performance is unsuccessful or cannot be carried out for other reasons, the Customer may in accordance with the provisions of the law reduce the remuneration, withdraw from the contract and/or – within the parameters of Section 6 of CONET's General Terms and Conditions (AV) – demand compensation for damages or reimbursement of expenses.

If subsequent performance is delayed, compensation for damages or reimbursement of expenses by the Provider is governed by Item 3.4 of CONET's General Terms and Conditions (AV). For compensation for damages or reimbursement of expenses, Section 6 of CONET's AV applies in particular.

Any right of choice the Customer has with regard to these claims for defects shall be exercised by him within a reasonable period of time; as a general rule within 14 calendar days.

8 Applicability of CONET's General Terms and Conditions (AV)

CONET's General Terms and Conditions (AV) apply on a supplementary basis.