General terms and conditions of DoBoTech AG

General

These "General Terms and Conditions for Deliveries and Services" as well as the " Code of Conduct for Business Partners" ("Code") of DoBoTech AG in the version applicable at the time of conclusion of the contract are integral parts of every contract.

The General Terms and Conditions and the Code shall apply unless written agreements to the contrary are made in individual cases. General terms and conditions (terms of delivery, assembly, etc.) and a code for business partners of the supplier shall only apply to the extent that they are expressly recognized in writing in the contract.

Scope

These General Terms and Conditions apply exclusively to entrepreneurs within the meaning of § 14 BGB (German Civil Code).

The terms and conditions of sale and delivery shall apply exclusively to all present and future business relations in which we are commissioned with the manufacture of goods and/or services or sell such.

Deviating, conflicting or supplementary general terms and conditions of the customer, even if known, shall not become part of the contract unless their validity is expressly agreed in writing.

Deviations from the contract or from these terms and conditions require prior written agreement, which can only be validly signed by our management or our other authorized representatives.

Offer

Our offers are always made without engagement. In particular, we reserve the right to take price errors into account.

The documents belonging to the offer such as concepts, illustrations, drawings, weights and dimensions are only approximate unless they are expressly designated as binding. We reserve the right of ownership and copyright to cost estimates, drawings and other documents provided; they may not be made accessible to third parties.

Preliminary work

Preliminary work such as the preparation of performance specifications, test set-ups and test executions, project planning documents, drafts, drawings and models, which are requested by the Purchaser, shall be subject to remuneration on the basis of a separate agreement.

Conclusion of contract

A contract with us shall only be deemed to have been concluded when the customer accepts our offer without reservation or when he receives our written order confirmation or when we commence with the execution of the delivery or service. If we issue a written order confirmation, this shall be authoritative for the content and scope of the contract, unless expressly agreed otherwise.

Amendments, collateral agreements and supplements as well as any agreements on quality or the assumption of guarantees require an express agreement in order to be effective; this must be in writing.

In the case of orders with delivery to third parties, the customer shall be deemed to be the principal, unless otherwise expressly agreed.

Order execution

Unless expressly agreed otherwise, the object of delivery or service shall only have the properties, technical data, etc. expressly stipulated in the contract; these shall only constitute warranties if we expressly declare that we wish to assume liability for them irrespective of fault or if they are expressly designated as such by us; warranty declarations must be made in writing. We reserve the right to make technical and design deviations from descriptions and details in our brochures, catalogues, or similar sales documents and to replace components with new ones.

technically equivalent or better, without the customer being able to derive any rights against us from this. Such descriptions and information as well as advertising statements (including those of the manufacturer) do not include any warranty statements. Unless otherwise stipulated by law, we only owe advice to the extent that we have assumed this as our main contractual obligation.

In the case of the delivery of software, the programs to be delivered by us shall be provided at our discretion on the data carriers normally used by us.

Unless expressly agreed, further and new developments of software licensed by DoBoTech AG shall not be included in the scope of delivery.

The customer shall provide us with all facts relevant for the performance of our delivery and/or service in full. We are not obliged to check data, information or other services provided by the customer for their completeness and correctness, unless there is reason to do so in consideration of the respective circumstances of the individual case or the obligation to check has been expressly assumed as a contractual obligation. Insofar as work is carried out at the customer's premises, sufficient workplaces and work equipment shall be made available to our employees free of charge.

Change in the scope of services

Subsequent changes to the scope of services always require our express consent. A prerequisite in any case is that an agreement has been reached on the associated adjustment of the description of the scope of services, the remuneration, the time schedules, and execution deadlines as well as on all other points which one party considers to be in need of regulation. Consent and agreement must in any case be in writing.

In particular, we are entitled to demand a reasonable extension of the delivery and performance deadlines plus a restart period as well as an assumption of the costs associated with the examination of the change request.

Cooperation obligations of the customer for consulting and software development services

Due to the high complexity and customer-related nature of EDP and software products, the success of the project regularly requires close cooperation between the customer and us. The contracting parties therefore undertake to show mutual consideration, to provide comprehensive information and precautionary warning of risks and protection against disruptive influences, including from third parties.

The customer assumes as an essential contractual obligation to ensure that all agreed cooperation and provision services are provided in the required quality and by the agreed deadlines or deadlines required for the realization of the project without additional costs for us. Insofar as this is necessary for the success of the project, he shall provide his own personnel to a sufficient extent as well as competent contact people for the entire duration of the project. Insofar as requirements are formulated in the specifications or elsewhere in the contract for external systems operated by the customer or by third parties, the customer shall be responsible to us for ensuring that these requirements are met. Enquiries on our part, which in our view are necessary for the realization of the project shall be answered without delay.

If information or documents provided by the customer prove to be incorrect, incomplete, ambiguous, or objectively not feasible, the customer shall make the necessary corrections and/or additions immediately after being notified by us.

This applies in particular to rough or fine concepts specified by the customer. The customer shall immediately remedy or have remedied any defects or malfunctions of components provided by us.

Deadlines and dates

A schedule as well as milestones in a project serve as orientation in the project's schedule. Deadlines shall only be binding if they are expressly agreed as binding deadlines; where applicable, this must be done in writing. Insofar as no binding deadlines and dates have been agreed with us, we shall only be in default if the customer has previously set us a reasonable grace period for the performance of the owed delivery without result. In any case, deadlines shall only run from the complete performance of all acts of cooperation owed by the customer and, if applicable, from the receipt of an agreed down payment. Subsequent requests for changes or delayed cooperation on the part of the customer shall extend the delivery times appropriately.

If the customer fails to meet his obligations to cooperate, cooperate or provide in whole or in part, the performance dates affected by this shall lose their binding force, in particular we shall not be in default. After unsuccessful reminder, we shall be entitled to demand compensation for the damage incurred by us, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the delivery item shall also pass to the customer at the point in time at which the customer is in default of acceptance. If the customer does not fulfil his obligations to cooperate, cooperate or provide within a reasonable period of grace following the further reminder, we shall also be entitled to terminate the contract without notice. In this case we shall be entitled to claims for compensation and remuneration at least in an amount resulting from § 649 BGB; further claims on our part shall remain unaffected. We shall have the same right in the event that, as a result of the delay that has occurred, we are no longer able to carry out the project within a reasonable period of time or only at considerably higher costs, for example due to other obligations.

If we are in default for reasons for which we are responsible, or if our obligation to perform is excluded for reasons for which we are responsible due to impossibility pursuant to Section 275 (1) of the German Civil Code (BGB), or if we can refuse performance pursuant to Section 275 (2) and (3) of the German Civil Code (BGB), we shall be liable exclusively in accordance with the statutory provisions, subject to the limitations of liability in Section XII of these Terms and Conditions.

Scope of delivery

Only our written order confirmation is authoritative for the scope of delivery. Subsidiary agreements and amendments require our written confirmation.

Delivery dates require our prior written confirmation to be valid.

Dimensions, weights, illustrations, and drawings are only binding for the execution if this is expressly confirmed in writing. The packaging shall be carried out in accordance with the usual technical and commercial aspects and shall be charged for as disposable packaging.

If deliveries are made in accordance with instructions, drawings, templates, and other information provided by the customer and if this infringes the industrial property rights of third parties, the customer hereby undertakes to indemnify us against all claims of the third party and all claims arising as a result of any legal defence.

If assembly / commissioning at the Purchaser's premises has been agreed and if this is delayed through the fault of the Purchaser, the Purchaser shall bear the costs for the waiting time and any further travel required by the assembly personnel.

Delivery shall be ex works to the delivery address specified by the Purchaser, unless otherwise agreed.

Acceptance

Insofar as our delivery requires acceptance, the customer is obliged to do so. Minor defects which do not seriously impair the suitability of the delivery for the contractually specified purpose do not entitle the customer to refuse acceptance, without prejudice to his right to assert statutory claims for defects.

Acceptance shall be deemed to have been granted when

-the customer refuses to declare acceptance in breach of the above clause 1 or refuses to cooperate in a joint acceptance test despite being requested to do so in due time

-the customer does not immediately declare acceptance in writing after a joint acceptance test has been carried out, although he has been requested to do so by us with a period of seven working days, unless the customer specifies in writing within this period the defects on the basis of which he refuses acceptance, in which case we will again draw the customer's attention to the intended significance of his conduct at the beginning of the period.

In the case of self-contained partial services, we shall be entitled to partial acceptance.

Intellectual services shall be deemed to have been accepted unless the customer expressly raises reservations in writing within 30 days of receipt thereof and in doing so specifically identifies defects, whereby we shall again draw the customer's attention to the intended significance of its conduct at the beginning of the period. In the event of such a reservation, we shall review our performance. If a reservation by the customer proves to be unjustified, he shall bear the costs incurred, unless he is only guilty of slight negligence.

Prices and payments

The prices quoted by us are decisive, to which the respective statutory value added tax - insofar as this is incurred - is added. Unless otherwise agreed, we shall be entitled to reimbursement of expenses in addition to the agreed remuneration.

If remuneration is agreed based on hourly rates, our current price list at the time of performance of the service shall apply unless otherwise agreed in the individual case.

There shall be no price increase for services provided within four months of the conclusion of the contract. Hours started will be charged in full.

Our invoices are payable without discount and free of charges according to the agreed payment plan, otherwise within 30 days of the invoice date. If cheques are accepted based on express agreements in individual cases, this shall only take place on account of payment and also without a discount deduction. Any discount charges shall be borne by the customer; we shall only recognize cheque payments as fulfilment when the respective amounts have been credited to our account without reservation. We reserve the right to demand reasonable payments on account and advances.

If we are entitled to several claims against the customer, we shall determine the debt against which the payment is to be offset. The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognized by us in writing. The same applies to the assertion of rights of retention.

If, after the conclusion of the contract, we become aware of circumstances according to which our claims against the customer appear to be at risk due to the customer's lack of ability to pay, we shall be entitled to carry out outstanding deliveries only against advance payment or the provision of security and to withdraw from the contract after the fruitless expiry of a period set for this purpose; clause 2 sentence 3 of this section shall apply accordingly.

In the event of default in payment, the customer shall owe default interest at the statutory rate, unless we can prove higher damages to the customer.

Claims for defects

If we have provided a defective delivery or service, the customer shall give us the opportunity to remedy the defect within a reasonable period of time, unless the remedy is unreasonable for the customer in the individual case or special circumstances exist that justify immediate withdrawal after weighing the interests of both parties. We shall in any case have the right to choose between rectification of the defect or delivery of a defect-free item. In the case of standard products from third-party manufacturers for which we merely broker the conclusion of a contract with the third-party manufacturer (Section VI. 1. Sentence 4 of these Terms and Conditions), the customer's claims for defects shall only be directed against the respective third-party manufacturer.

The customer is obliged to inspect the delivery item for obvious defects that are readily apparent to an average customer. Obvious defects, such as the absence of data carriers or manuals and readily recognizable damage to a data carrier, must be notified to us in writing within one week of receipt of the delivery. Defects which only become apparent later before the expiry of the limitation periods for defects must be notified to us in writing within one week of their discovery by the customer. In the event of a breach of the duty to inspect and give notice of defects by the customer, the delivery item shall be deemed to have been approved in view of the defect in question.

Claims for defects must be asserted by the customer in writing, naming all detected defects and stating the circumstances under which they became apparent. A defect shall not be deemed to exist if an error claimed by the customer cannot be reproduced. If the customer has interfered with the hardware or software supplied, the customer shall only be entitled to claim for defects if the customer proves that its interference was not the cause of the defect.

If it turns out that a defect claimed by the customer does not exist, in particular if a claimed defect cannot be reproduced, we shall be entitled to demand reasonable compensation for our expenses, unless the customer is guilty of slight negligence.

If subsequent performance fails, is refused by us or is unreasonable for the customer, the customer shall be entitled to the other statutory claims for defects (withdrawal, reduction, self-performance, damages or reimbursement of futile expenses). Claims for damages shall only exist in accordance with section XII of these terms and conditions.

If the defect lies in an insignificant deviation from an agreed quality, the customer shall only be entitled to subsequent performance or to a reasonable reduction, at our discretion. If no quality has been agreed, the same shall apply in the event of an only insignificant deviation from the suitability for the otherwise usual use assumed under the contract, which is usual for goods of the same type and which the customer can expect according to the type of goods.

Liability and withdrawal

We shall be liable for damages exclusively in accordance with the following provisions:
We are liable on the merits
- for intentional or grossly negligent actions
- for any culpable breach of material contractual obligations

Insofar as we are liable in cases of simple negligence, our obligation to pay compensation shall be limited in amount to compensation for the foreseeable damage typical for the contract.
Insofar as we are liable in cases of simple negligence, the following shall apply, unless this is insufficient to cover typical and foreseeable damages in a specific individual case: In the case of financial loss, the maximum amount per claim shall be € 50,000 or, if the subject matter of the service is a license program, the amount of the one-off license fee or the fee for 12 months of use; the highest amount shall apply in each case; in the case of damage to property, the maximum amount per claim shall be € 500,000. Otherwise, liability for property damage and financial loss is excluded.
We refer to section VII. 3. and 4. of these terms and conditions. Liability for damages arising from injury to life, body, or health as well as product liability in accordance with §§ 1, 4 ProdHaftG remain unaffected by the above liability regulations.
We shall only be liable for the recovery of data if the customer has ensured that lost data can be recovered with reasonable effort. The customer is therefore obliged to regularly back up data and programs at intervals appropriate to the application.
Insofar as our liability for damages is excluded or limited in accordance with the above provisions, this shall also extend to the personal liability of our executive bodies, employees and other staff, representatives and vicarious agents and shall also apply to all claims arising from tort (§§ 823 ff. BGB), but not to claims in accordance with §§ 1, 4 ProdHaftG.
The right of the customer to withdraw from the contract due to a breach of duty for which we are not responsible, and which does not consist of a defect in a purchased item or a work is excluded.

Limitation

The customer's claims for defects shall become statute-barred one year after the statutory commencement of the limitation period. Excluded from this are claims that become time-barred in accordance with §§ 438 I No. 1, 2; 634a I No. 2 BGB.
Other contractual claims of the customer due to breaches of duty shall become statute-barred after one year from the statutory commencement of the limitation period.
The statutory limitation periods shall remain unaffected by the above provisions in the following cases:
- for damages resulting from injury to life, body or health;
- for other damages based on an intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents;
- for the right of the customer to withdraw from the contract in the event of a breach of duty for which we are responsible, and which does not consist of a defect in the purchased item or the work;
- for claims due to fraudulent concealment of a defect and from a quality guarantee;
- for claims for reimbursement of expenses pursuant to § 439 para. 2, 3 BGB.

Retention of title

The items delivered by us shall remain our property until the agreed price has been paid in full and all claims resulting from the business relationship with the customer have been settled. This shall also apply if individual or all claims are included by us in a current account and the balance has been struck and recognized.

The items subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. If the goods are pledged or seized, the customer is obliged to inform us immediately and he must bear all costs in connection with the release of the items. The right of the customer to sell the items delivered by us to third parties shall end as soon as the contractual partner falls into arrears with payments to us or becomes insolvent. In this case, the ordering party may only dispose of the reserved goods with our written consent.

Until revoked by us in accordance with letter c) below, the customer is authorized to resell and/or process the items subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

- The retention of title shall extend to the products resulting from the processing, mixing or combining of the items at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with objects of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined objects. In all other respects, the same shall apply to the resulting product as to the items delivered under retention of title.
- The contracting party hereby assigns to us by way of security the claims against third parties arising from the resale of the items or the product in total or in the amount of the co-ownership share in accordance with the above paragraph. We accept this assignment already now (anticipated).
- The customer remains authorized to collect the claims in addition to us. We undertake not to collect the claims as long as the customer fulfils all his payment obligations towards us, no deterioration of his ability to pay has occurred and he will not assert the retention of title. However, if this is the case, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the third party debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the authorization of the customer to further sell and process the items subject to retention of title.
- We declare the release of the securities granted to us insofar as their value exceeds the amount of our claims against the purchaser by more than 10%. With the settlement of all claims from the business relationship with the purchaser, the ownership of the reserved goods and the assigned claims shall pass to the purchaser.

In the event of conduct in breach of contract on the part of the ordering party, in particular in the event of non-payment of due payment claims against us, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the delivered items based on the reservation of title. The customer is obliged to treat the items made available to him with care until the acquisition of ownership by the contractual partner subject to a condition precedent and not to make any unauthorized changes. If maintenance of the goods delivered by us is required, the contractual partner shall carry this out at its own expense, unless otherwise agreed.

Secrecy and data protection

Insofar as a contracting party gains knowledge of confidential information of the other contracting party or the respectively engaged vicarious agents (in particular about technical information as well as business and operational matters) in the course of the performance of the contract, it shall be obliged to treat such information confidentially. The duty of confidentiality shall remain in force even after termination of the contract. The provisions on rights to software or other project results remain unaffected by the above confidentiality agreement.

Within the scope of the purpose of the order, we are authorized to process the customer's data or have it processed by third parties in compliance with the relevant data protection provisions.

We are entitled to include the name of the client in a reference list. We will coordinate all other references to the client with the client in advance.

Place of Performance and Prohibition of Assignment

The place of performance for all deliveries and services is Rosenheim.

The assignment of claims to which the customer is entitled against us from the business relationship is excluded.

Jurisdiction and applicable law

The place of jurisdiction for all claims arising from the business relationship vis-à-vis merchants and legal entities under public law is Traunstein.

In the case of cross-border deliveries and services, Munich shall be the exclusive place of jurisdiction for all disputes arising from the contractual relationship (Article 23 EuGVVO or 17 EuGVÜ). However, we reserve the right to sue the customer at his general place of jurisdiction or to invoke any other court that has jurisdiction based on the EuGVVO or the EuGVÜ.

The law of the Federal Republic of Germany shall apply exclusively to all business and legal relations between the customer and us; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.