General Terms and Conditions of Delivery and Service
- Software -

b+m Group

§ 1 Scope of application, form

(1) The following terms and conditions ("GTC") apply to all of our IT services for the respective user ("Customer"). The IT services include the provision and use of individual and standard software ("Software" or "Contractual Software") as well as the provision of maintenance and support services for our software products ("Software Maintenance"). The provision of documentation requires a separate written agreement. If documentation is provided, the term "Software" in the following also includes the documentation.

(2) The Customer expressly agrees to the GTC and acknowledges them by using the Software or accepting the service.

(3) Deviating general terms and conditions of the Customer shall not apply, even if we do not expressly object to such terms and conditions or if we provide the service to the Customer without reservation in the knowledge of conflicting or deviating terms and conditions.

§ 2 Rights of use

(1) Upon full payment of the remuneration stipulated in the underlying contract, the Customer shall receive a simple, non-exclusive, non-transferable right to use the Contractual Software to the agreed extent, without any temporal or geographical restrictions. Permitted use includes use by the Customer as intended. Under no circumstances shall the Customer have the right to lease or otherwise sublicense, to publicly reproduce, make available to the public, or make available to third parties, whether for a fee or free of charge. Section 2 (5) of the GTC shall remain unaffected.

(2) The aforementioned rights of use also apply to company-specific additional functions that we install, create or will create in the future to supplement the standard system on behalf of the Customer.

(3) The Customer is entitled to make a backup copy if this is necessary to ensure future use. A backup copy is a copy of the computer program which is kept ready for cases in which the actual program copy is accidentally damaged or destroyed, is lost or can no longer be used for other reasons. The backup copy may not be used as an additional productive system. The Customer shall visibly affix to the backup copy made the words "backup copy" and a copyright notice from us. The Customer shall not be entitled to make or have made any other copies or reproductions of the Software without our prior written consent.

(4) The Software shall be delivered exclusively in machine-readable form ("object code"). The Customer is not entitled to the transfer and use of the source code of the Software and the source code documentation. The Customer shall not be entitled to decompile, disassemble or otherwise reverse engineer the Software in order to obtain the source code; Section 69e of the German Copyright Act shall remain unaffected.

(5) If the Customer uses the Contractual Software to an extent that exceeds the acquired rights of use qualitatively (with regard to the type of use permitted) or quantitatively (with regard to the acquired license rights), he shall immediately acquire the rights of use required for the permitted use against payment. If he fails to do so, we shall assert the rights to which we are entitled.

(6) Copyright notices, serial numbers and other features serving to identify the program may not be deleted, altered, obscured or suppressed and must always be retained when making backup copies.

(7) The license conditions of the respective manufacturer apply to third-party programs. This also applies to open source licenses if a Software component is subject to an open source license. If the license does not already include the obligation to provide the license terms and other mandatory information, we will provide the licensee with the terms of the third-party manufacturer upon request.

§ 3 Remuneration, due date and default

(1) All prices are net prices, i.e. excluding any applicable value added tax (VAT).

(2) Quotations are only binding in writing.

(3) The prices stated in our offers are only valid if the full scope of the offered services is ordered.

(4) Payments shall be made within 10 calendar days of the date of the invoice without any deduction to one of our accounts. After expiration of the aforementioned period, the Customer is in default without any further reminder.

(5) The Customer shall only be entitled to set-off or retention rights to the extent that his claim has been legally established or is undisputed.

§ 4 Customer´s duty to cooperate

(1) The Customer has informed himself about the essential functional features of the Contractual Software and bears the risk that it meets his wishes and requirements. In case of doubt, the Customer shall consult us prior to the conclusion of the contract.

(2) The Customer shall be solely responsible for setting up a functional hardware and Software environment for the contract Software, also taking into account the additional workload caused by the contract Software.

(3) The Customer shall prepare the working environment for the provision of our IT services accordingly and cooperate in the performance of the order free of charge, in particular by providing employees, IT systems, data and telecommunications equipment.

(4) The Customer is obliged to follow the operating instructions and our other instructions.

(5) The Customer undertakes to notify us immediately in writing of any defects that occur. The defect and its circumstances must be described clearly and as precisely as possible. In addition, existing documents suitable for illustrating the defect must be enclosed, in particular - if possible - a screen printout or a printout of the defective document. If necessary, the data causing the defect must be made available for testing on a data carrier or by e-mail.

§ 5 Warranty

(1) We ensure the agreed quality and that the Customer can use the Contractual Software without infringing the rights of third parties. The warranty for material defects shall not apply to defects that are due to the fact that the Contractual Software is used in a hardware and Software environment that does not meet the specified requirements or to changes and modifications that the Customer has made to the Software without our prior written consent.

(2) Warranty claims presuppose that the Customer has duly fulfilled his inspection and complaint obligations in accordance with Section 377 HGB (German Commercial Code). The Customer must inspect the Contractual Software for obvious defects immediately upon receipt and notify us of such defects without delay, otherwise any warranty for such defects shall be excluded. The same applies if such a defect is discovered later.

(3) The Customer shall grant us access to the Contractual Software for the purpose of troubleshooting and defect removal, either directly or remotely at our discretion. We are entitled to check whether the Contractual Software is being used in accordance with the provisions of this contract.

(4) Within the warranty period, the Customer ensures to provide us with functional remote access immediately after notification of the defect.

(5) In the event of a material defect, we shall initially be entitled to subsequent performance, i.e. at our discretion to remedy the defect ("rectification") or to deliver a replacement. In the event of a replacement delivery, the Customer shall, if necessary, accept a new version of the Software, unless this leads to unreasonable impairment.

(6) We are entitled to make the subsequent performance owed dependent on the Customer payment of the purchase price due.

(7) The Customer shall only be entitled to reduce the remuneration or to withdraw from the contract - taking into account the statutory exceptions - if the subsequent performance has failed twice after a reasonable deadline has been set. In the case of an insignificant defect, however, there is no right of withdrawal. In addition to the right of withdrawal, the Customer shall not be entitled to claim damages on account of the defect.

(8) In the event of defects in title, we shall, at our option, provide the Customer with a legally unobjectionable opportunity to use the Contractual Software or modify the Software in such a way that the rights of third parties are no longer infringed.

(9) Warranty claims of the Customer shall be excluded if the Software has been modified, used outside the specified environment or improperly operated or if the Customer is responsible for infringements of industrial property rights.

(10) If the Customer has culpably contributed to the defect, in particular by failing to comply with his duty to avoid and minimize damage, we shall be entitled to claim damages after subsequent performance in the amount of the Customer's contribution to the defect.

(11) We may demand reimbursement of expenses if there is no defect. Section Section 254 BGB shall apply accordingly.

(12) With the exception of claims for damages, warranty claims due to material defects become statute-barred 12 months after delivery or after notification and activation of the access data for the download area or after acceptance.

(13) If a maintenance contract exists between the parties, the period for the rectification of defects shall be determined by the periods specified in this maintenance contract.

§ 6 Liability

(1) We assume no liability for the correctness and completeness of the Customer's data.

(2) Our liability, also in the case of damages due to breaches of duty during contract negotiations (in particular also in the case of damages that have not occurred to the delivery item itself), regardless of the legal grounds, is limited to

    (a) intention;
    (b) Gross negligence on the part of the organs or executive employees;
    (c) culpable injury to life, body or health;
    (d) fraudulently concealed defects;
    (e) breach of warranted characteristics;
    (f) defects in the delivery item to the extent that liability exists under the Product Liability Act for personal injury and property damage to privately used items;

In the event of a culpable breach of a material contractual obligation (an obligation whose fulfillment is essential to the proper execution of the contract and on whose fulfillment the contractual partner regularly relies and may rely), we shall also be liable for gross negligence of non-executive employees and for slight negligence; in the latter case, however, limited to the reasonably foreseeable damage typical for the contract.

(3) The Customer acknowledges that it is not possible to create Software and other programming services that are completely free of errors according to the state of the art.

(4) Our liability for loss of data is limited to the typical recovery costs that would have been incurred if backup copies had been made regularly and in a manner commensurate with the risk.

(5) Compensation for purely financial losses is also limited by the general principles of good faith, for example in cases of disproportion between the value of the order and the amount of the loss.

(6) Further claims - for whatever legal reason - are excluded, in particular also in the case of damages which have not occurred to the delivery item itself.

(7) Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

§ 7 Force Majeure

(1) Events of Force Majeure which make it substantially more difficult or impossible for us to perform under the contract shall release us from the obligation to perform our contractual obligations and from any liability for damages or other contractual remedies for breach of contract for as long as the respective event prevents us from performing under the contract. This shall also apply if we are already in default.

(2) Force majeure shall be deemed to exist if external, unforeseeable and unavoidable circumstances occur for which we are not responsible, e.g. labor disputes, operational disruptions, natural disasters, shortages of raw materials or energy, disruptions in the supply chain, sabotage, failure of telecommunications, information systems, means of transportation or energy supply, currency and trade restrictions, embargoes, sanctions, official measures, compliance with laws or governmental orders, epidemics or pandemics, fire, war and riots or other events for which we are not responsible, regardless of whether they occur in our company or in a third-party company on which the respective contractual performance is essentially depends.

(3) We are obliged to inform the Customer immediately of the beginning and end of such an obstacle.

§ 8 Security measures, right of inspection

(1) The Customer shall take appropriate measures to protect the Contractual Software and, if applicable, the access data for online access against access by unauthorized third parties. In particular, all copies of the Contractual Software and the access data shall be stored in a protected location.

(2) At our request, the Customer shall enable us to check the proper use of the Contractual Software, in particular whether the Customer is using the program qualitatively and quantitatively within the scope of the license rights acquired by him. For this purpose, the Customer

shall provide us with information, grant us access to relevant documents and records and enable us or an auditing company named by us and acceptable to the purchaser to inspect the hardware and Software environment used. We may conduct the audit at the Customer's premises during the Customer's normal business hours or have it conducted by a third party bound by confidentiality. We will ensure that the Customer's business operations are disturbed as little as possible by our on-site activities. If the examination reveals that the acquired license rights have been exceeded or that the Software is otherwise not being used in accordance with the contract, the Customer shall bear the costs of the examination, otherwise we shall bear the costs.

§ 9 Confidentiality and data protection

(1) The parties undertake to keep confidential information of the other party secret for an unlimited period of time and to use and exploit it only for the purpose of implementing the contractual agreement between the parties. Furthermore, the parties undertake not to make confidential information directly or indirectly available to third parties (including affiliated companies, consultants, etc.) without the prior written consent of the other party. The parties shall take reasonable precautions to protect the Confidential Information, but at least those precautions that the parties would take to protect particularly sensitive information about their own business.

(2) "Confidential Information" means all information and documents of the other party which are marked confidential or which should be regarded as confidential in view of the circumstances, in particular all Software including source code, all trade secrets, all information and all data or other non-public or confidential information relating to products, processes, know-how, designs, formulas, algorithms, designs, developments, research, computer programs or parts thereof (including the source code), interfaces, databases and other copyrighted works or any other information relating to the business of the parties and their employees, consultants, licensees or other persons attributable to such party, which is disclosed or otherwise designated as confidential in written, electronic, embodied or oral form within the scope of the contractual relationship.

(3) Excluded from this obligation is such confidential information,

    a) which is demonstrably already known to the recipient at the time of the conclusion of the contract or which subsequently becomes known to the recipient from a third party without breach of a confidentiality agreement, statutory provisions or official orders;

    b) which are publicly known at the time of the conclusion of the contract or which become publicly known subsequently, provided this is not due to a breach of this contract;

    c) which must be disclosed due to legal obligations or by order of a court or governmental authority. To the extent permissible and possible, the party required to disclose shall inform the other party in advance and give it the opportunity to object to such disclosure.

(4) The parties shall only grant access to confidential information to consultants who are subject to professional secrecy or who have previously been subject to obligations corresponding to the confidentiality obligations of this agreement. Furthermore, the parties shall only disclose confidential information to those employees who need to know such information in order to perform the contractual relationship and shall require such employees to maintain such confidentiality even after

they have left the company, to the extent permitted by labor law and data protection law.

(5) The Customer is responsible for compliance with all data protection regulations for the processing of connection data and personal data and must ensure that these are complied with in the event of access by us. The Customer agrees to the processing and storage of the data that we become aware of in the course of the contractual relationship and that is necessary for the performance of the contract.

§ 10 Applicable law, place of jurisdiction

(1) These terms and conditions as well as all contracts concluded on the basis thereof and all contractual relationships between us and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany, excluding its conflict of laws regulations and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, our registered office shall be the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the Customer is an entrepreneur in the sense of Section 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance of the obligation to perform according to these terms and conditions or an overriding individual agreement or at the Customer's general place of jurisdiction. Overriding statutory provisions, in particular with regard to exclusive jurisdiction, shall remain unaffected.

§ 11 Final provisions

(1) The Customer may only assign claims against us to third parties with our written consent.

(2) The parties are aware that the Contractual Software may be subject to export and import restrictions. In particular, licensing requirements may exist or the use of the Software or related technologies abroad may be subject to restrictions. Customer shall comply with all applicable export and import control regulations and any other relevant regulations. Our performance of the contract is subject to the proviso that there are no impediments to performance due to national and international export and import regulations or other legal provisions.

(3) Should individual provisions of these terms and conditions or of the contract be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions.