

1 Remuneration, payments, reservations, early termination, deadlines

1.1 In the absence of an agreement to the contrary, remuneration is calculated on the basis of expense and in accordance with the supplier's prices generally applicable when the contract is entered into. Remuneration is generally stated on the basis of net prices plus statutory value-added tax.

The supplier may submit invoices on a monthly basis. If services are remunerated on the basis of expense, the supplier will document the nature and duration of activities and enclose this documentation with the invoice.

1.2 All invoices must generally 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 exercise offset or withholding rights only in the case of undisputed or legally unappealable 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 is doubtlessly present. Item 4.1 applies accordingly. The customer has no withholding right if its defect claim is time-barred.

1.4 The title to the services and the rights to be granted to the services are retained by the supplier until complete payment of the remuneration owed, against which justified defect withholdings in accordance with 1.3 paragraph 2 will be taken into account. The supplier furthermore retains title until fulfilment of all its claims under the business relationship with the customer.

For the duration of payment default by the customer the supplier is entitled to forbid it to make further use of the services. This right may be asserted by the supplier only for a reasonable time, generally 6 months at most. This does not constitute withdrawal from the contract. § 449 (2) of the German Civil Code/BGB is unaffected.

If the customer or its customers return the services, acceptance of such returns of services does not constitute withdrawal by the supplier unless it has expressly declared withdrawal. The same applies for supplier attachment of goods which are subject to retention of title or attachment of rights to such goods.

Objects subject to retention of title or rights may not be pledged by the customer or assigned by it as security. The customer is allowed as a reseller to resell only in the normal course of business and under the proviso that the customer's claims against its customers in connection with the resale are effectively assigned to the supplier by the customer and that the customer transfers title to its customer under the condition of payment. Through the exchange of contract the customer assigns to the supplier as security its claims against its customers in connection with such sales, and the supplier at the same time accepts this assignment.

To the extent that the value of the supplier's security rights exceeds the amount of the secured claims by more than 20%, the supplier will at the customer's request release an appropriate share of the security rights.

1.5 If the customer is economically unable to fulfil its duties towards the supplier, the supplier may immediately terminate existing swap agreements with the customer through withdrawal - or continuous obligations through immediate termination - even in the case of an insolvency application by the customer. § 321 BGB und § 112 of the German Insolvency Order/InsO are unaffected. The customer will inform the supplier in writing in good time about any threatened insolvency.

1.6 Fixed service deadlines will be agreed exclusively in documented form. Agreement of a fixed service deadline is subject to the proviso that the supplier receives the services of its respective input suppliers in good time and according to contract.

2 Collaboration, cooperation duties, confidentiality

2.1 The customer and the supplier will each nominate a responsible contact person. In the absence of an agreement to the contrary, communication between the customer and the supplier will take place through these contact persons. The contact persons must promptly obtain all the 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 supplier to the necessary extent and in its sphere of operations to create all the conditions required for orderly execution of the contract. For this purpose it will in particular provide the necessary information and, if required, allow remote access to the customer system. The customer will furthermore ensure that informed personnel are available to support the supplier.

To the extent that it is agreed in the contract that services can be performed on the customer site, the customer will on request by the supplier make available sufficient workplaces and working materials free of charge.

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

2.4 The contractual partners are obliged to maintain silence about business and commercial secrets and 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 finalisation, execution or handling 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 continuous obligations, not before their end.

The contractual partners will also impose these obligations on their employees and any third parties who may be used.

2.5 The contractual partners are aware that electronic and unencrypted communication (eg by e-mail) involves security risks. In this type of communication they will therefore pursue no claims based on the absence of encryption except in cases where encryption was agreed beforehand.

3 Disruption of service performance

3.1 If deadline observance is prejudiced by a cause which is outside the supplier's control, including strikes and lockouts (disruption), deadlines will 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 its area, and promptly notify the duration of the disruption.

3.2 If costs are increased because of a disruption, the supplier may also demand remuneration for the additional expenses unless the disruption and its cause are outside the customer's control and responsibility.

3.3 If, as the result of improper performance by the supplier, the customer is entitled to withdraw from the contract and/or demand damages in lieu of performance or asserts this, the customer will on request by the supplier provide a written declaration within a reasonable time as to whether it asserts such rights or still wishes service performance. In the case of withdrawal, the customer must reimburse to the supplier the value of already existing usage possibilities; the same applies for deterioration as the result of use in accordance with stipulations.

If the supplier is in default with service performance, the reimbursement of damage and expense by the customer is limited to 0.5% of the price for that part of the service which cannot be used because of the default. The default liability is limited in total to 5% of this price. This does not apply if default is the result of gross negligence or wilful intent by the supplier.

3.4 In the event of a delay in performance the customer has a withdrawal right within the parameters of the provisions of the law only if the supplier 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, it is entitled to demand for each complete 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 Material defects and reimbursement of expenses

4.1 In the event of an insignificant variance in the supplier's services from the contractually agreed characteristics, no claims for material defects exist.

No claims for defects furthermore exist in the case of excessive or improper use, natural wear and tear, failure of components in the system environment, software faults which cannot be reproduced or otherwise proven by the customer, or damage caused by special external influences which are not specified in the contract. This also applies in the case of subsequent modification or repair by the customer or third parties unless this does not make analysis and correction of the material defect more difficult.

Item 6 applies on a supplementary basis for claims for damage compensation and reimbursement of expenses.

4.2 Claims for material defects are time-barred one year after the start of the statute of limitation. The legal deadlines for a recourse claim in accordance with § 478 BGB are unaffected. Where the law according to § 438 (1) No.2 BGB (construction works and objects for construction works) stipulates more extended deadlines, this also applies in the case of wilful or grossly negligent breach of duty by the supplier, fraudulent non-disclosure of a defect or injury to the body, life or health.

Processing of a material defect notification from the customer leads to an interruption of the running time of the statute of limitations only if the legal requirements for this are fulfilled. It does not result in a restart of the running time.

Subsequent performance (new delivery or repair) affects the time limit only with regard to the defect triggering subsequent performance.

4.3 The supplier is entitled to demand reimbursement of its expenses to the extent that:

- a) It starts work on the basis of a notification and there is no defect, unless the customer was unable with reasonable effort to detect that there was no defect, or
- b) A notified fault cannot be reproduced or otherwise proven by the customer as a defect, or
- c) Additional expense is incurred because of improper fulfilment of the customer's duties (see also 2.2, 2.3 and 5.2).

5 Legal defects

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

The supplier 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 If a third party pursues a claim against the customer that the supplier's service infringes its rights, the customer will promptly inform the supplier. The supplier and where relevant its input suppliers are entitled - but not obliged - as far as legally permissible to defend themselves at their own expense against the claims pursued.

The customer is not entitled to recognise third-party claims before giving the supplier a reasonable opportunity to avert the third-party claims in another way.

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

- a) Obtain for the customer the right to use the service, or
- b) Design the service in such a way that no rights are infringed, or
- c) Take back the service against reimbursement of the payment made by the customer for it (less reasonable compensation for use) if the supplier is unable to achieve any other remedy at reasonable cost.

In this context, reasonable account will be taken of the customer's interests.

5.4 Claims by the customer for legal defects are time barred in accordance with 4.2. For claims by the customer for damage compensation and reimbursement of expenses, 6 applies on a supplementary basis; for additional expenses by the supplier, 4.3 applies accordingly.

6 General liability of the supplier

6.1 The supplier is always liable to the customer:

- a) For damage caused by it or its legal representatives or assistants in performance through wilful intent or gross negligence
- b) In accordance with the Product Liability Law
- c) For damages resulting from injury to the body, life or health for which the supplier, its legal representatives or assistants in performance are responsible.

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

In the case of material and financial damage, such liability is limited to damage which is typical of the contract and foreseeable. This also applies to lost profit and unachieved savings. Liability for other distant consequential damage is excluded.

For each individual damage incident, liability is limited to the contract value or, in the case of ongoing remuneration, to the amount of remuneration per contract year, but to not less than € 50,000. With regard to the statute of limitations, 4.2 applies accordingly. On exchange of contract the parties may agree more extensive liability against separate remuneration. Liability in accordance with 6.1 is unaffected by this paragraph.

On a supplementary and overriding basis the supplier's liability as the result of minor negligence under the respective contract and its execution for damage compensation and reimbursement of expenses is limited in total – regardless of the legal reason – to the percentage stipulated in this contract of the remuneration agreed on exchange of contract. Liability in accordance with 6.1 b) is unaffected by this paragraph.

- 6.3 Under a guarantee declaration the supplier is liable only for damage compensation if this liability is expressly undertaken 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 supplier is liable only for the expenses required for restoration of the data in the case of orderly data backup by the customer. In the case of minor negligence, such liability arises only if the customer has carried out orderly data backup immediately before the measure leading to the data loss.
- 6.5 For expense reimbursement claims and other liability claims by the customer against the supplier, 6.1 to 6.4 apply accordingly.

7 Miscellaneous

- 7.1 The customer will observe under its own autonomous responsibility the import and export regulations applicable for the goods and services, particularly the USA regulations. In the case of cross-border delivery of goods or services, the customer will bear the customs duty, charges and other levies payable. In the absence of an agreement to the contrary, the customer will under its own autonomous responsibility handle the legal or official procedures in connection with cross-border delivery of goods and services.
- 7.2 German law applies. Application of UN purchasing law is excluded.
- 7.3 The supplier provides its services on the basis of its General Terms and Conditions of Business (AGB). The customer's business terms do not apply even if the supplier does not expressly countermand them.
Acceptance of the services by the customer constitutes recognition of the supplier's AGB and a waiver of the customer's business terms.
Other terms and conditions are binding only if the supplier recognises them in writing; the supplier's AGB then apply on a supplementary basis.
- 7.4 Amendments and supplements to this contract must be agreed in writing.
- 7.5 The place of jurisdiction for a registered trader, legal entity under public law or special fund under public law is the place of the registered offices of the supplier. The supplier is also entitled to pursue legal action against the customer in the place of the latter's registered offices.