

General Terms and Conditions for Operator Services in Information Technology (B2B)

2024 version

**Trade Association of Management
Consulting, Accounting and Information
Technology**

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1. General information

- 1.1. The Contractor shall provide information technology services and services in the operation of hardware and software components in compliance with the attached Service Level Agreement (SLA) constituting an integral part of these GTC for the Client.
- 1.2. These General Terms and Conditions (GTC) shall apply to all current and future services provided by the Contractor to the Client, even if no express reference is made to the GTC in individual contract closures. The Client's terms and conditions shall only apply if acknowledged by the Contractor in writing.

2. Scope of services

- 2.1. The exact scope of the Contractor's services shall be specified in the respective SLA with the Client. Unless otherwise agreed, the Contractor shall provide the services during the Contractor's normal business hours as specified by the SLA. The Contractor shall ensure the provision and availability of the services in as specified by the SLA.
- 2.2. All equipment and technology used for the provision of services by the Contractor shall be chosen subject to the Client's qualitative and quantitative service requirements, as determined on the basis of the information provided by the Client. If new requirements by the Client necessitate a change in the services or the technology used, the Contractor shall submit a corresponding quote at the Client's request.
- 2.3. The Contractor is authorised to change the equipment used to provide the services at its own discretion if no impairment of the services is to be expected.
- 2.4. Services provided by the Contractor which are utilised by the Client beyond the agreed scope of services shall be remunerated by the Client on the basis of the actual personnel and material costs at the Contractor's respectively applicable rates. This includes, in particular, services provided outside the Contractor's normal business hours, analysing and eliminating faults and errors caused by improper handling or operation by the Client or other circumstances for which the Contractor is not responsible. Training services are also generally not included in the services and require a separate agreement.
- 2.5. Contracts for any third-party services procured by the Contractor at the Client's request shall be concluded exclusively between the Client and the third party in accordance with the third party's respective terms and conditions. The Contractor shall only be responsible for the services it provides itself.

- 2.6. We expressly point out that the offer does not include any barrier-free design, in particular as specified by the Federal Act on Equal Opportunities for Persons with Disabilities (Bundes-Behindertengleichstellungsgesetz - BGStG), the Federal Act on Barrier-free Access to Federal Websites and Mobile Applications (Web-Zugänglichkeits-Gesetz - WZG) or the Federal Act on Accessibility Requirements for Products and Services (Barrierefreiheitsgesetz - BaFG), which comes into force on 28 June 2025, unless this has been requested separately/individually by the Client. If no barrier-free design has been agreed, the Client shall be responsible for checking the admissibility of the service with regard to the relevant statutory provisions.

3. Client's obligations to co-operate and provide materials

- 3.1. The Client undertakes to support all measures necessary for the provision of the services by the Contractor. Furthermore, the Client undertakes to take all measures necessary for the fulfilment of the contract and not included in the Contractor's scope of services.
- 3.2. If the services are provided on site at the Client's premises, the Client shall provide the network components, connections, supply current including peak voltage equalisation, emergency power supplies, storage space for systems, workstations, infrastructure and any other resources required by the Contractor in the necessary scope and quality (e.g. air conditioning) free of charge. In any case, the Client shall be responsible for compliance with the prerequisites required by the respective manufacturer for the operation of the hardware. The Client shall also be responsible for room and building security, including protection against water, fire and access by unauthorised persons. The Client is responsible for special security precautions (e.g. security cells) on its premises. The Client shall not be authorised to issue instructions of any kind to the Contractor's employees and shall submit all requests regarding the provision of services exclusively to the contact person designated by the Contractor.
- 3.3. The Client shall provide all information, data and documents required by the Contractor to fulfil the order in the form requested by the Contractor on the agreed dates and at its own expense and shall support the Contractor on request in problem analysis and troubleshooting, the coordination of processing orders and the coordination of services. Changes in the Client's work processes that may cause changes in the services to be provided by the Contractor for the Client shall require prior consultation with the Contractor on their technical and commercial effects.
- 3.4. If this is not expressly included in the Contractor's scope of services, the Client shall provide a network connection at its own risk and expense.
- 3.5. The Client shall treat the passwords and log-ins required to use the Contractor's services confidentially.

- 3.6. The Client shall keep the data and information handed over to the Contractor also on its own premises so that it can be reconstructed at any time in the event of loss or damage.
- 3.7. The Client shall fulfil all its cooperation obligations in such a timely manner that the Contractor is not hindered in the provision of the services. The Client shall ensure that the Contractor and/or the third parties commissioned by the Contractor have the necessary access to the Client's premises for the provision of the services. The Client shall be responsible for ensuring that the employees of its affiliated companies involved in the fulfilment of the contract or third parties commissioned by it cooperate accordingly in the fulfilment of the contract.
- 3.8. Despite any failure by the Client to meet its cooperation obligations on the agreed dates or to the agreed extent, the services provided by the Contractor shall nevertheless be deemed provided as specified by the contract despite possible restrictions.
Schedules for the provision of the services by the Contractor shall be reasonably extended. Any additional expenses and/or costs incurred by the Contractor as a result thereof shall be remunerated separately by the Client at the Contractor's applicable rates.
- 3.9. The Client shall ensure that its employees and third parties attributable to it handle the equipment and technologies used by the Contractor and any assets provided to it with care; the Client shall be liable to the Contractor for any damage.
- 3.10. Unless otherwise agreed, the provision of materials and co-operation by the Client shall be free of charge.
- 3.11. If the Contractor provides the Client with storage space, the Client shall be obliged not to store any data on this storage space whose use violates applicable law, official orders, third-party rights or agreements with third parties. In addition, the Client shall be obliged to check the data for viruses or other harmful components before storing it on this storage space and to use state-of-the-art measures (e.g. virus protection programmes) for this purpose.

4. Personnel

- 4.1. If employees of the Client are taken on by the Contractor in accordance with the agreements made between the contracting parties, a separate written agreement shall be made.

5. Change Requests

- 5.1. Both contracting parties may request changes to the scope of services at any time ("change request"). A requested change must, however, include a precise description of the change, the reasons for the change, the impact on scheduling, and the time schedule, as well as the costs in order to give the addressee of the change request the opportunity to make an appropriate assessment. A change request only becomes binding once it has been legally signed by both contracting parties.

6. Performance disruptions

- 6.1. The Contractor undertakes to provide the services in accordance with the contract. If the Contractor does not provide the services at the scheduled times or only provides them inadequately, i.e. with significant deviations from the agreed quality standards, the Contractor shall be obliged to begin remedying the defects immediately and to provide its services properly and free of defects within a reasonable period of time by repeating the affected services or carrying out necessary rectification work at its discretion.
- 6.2. If the defectiveness is based on the provision of materials or co-operation by the Client or on a breach of the Client's obligations pursuant to Section 3.9, any obligation to remedy defects free of charge shall be excluded. In these cases, the services rendered by the Contractor shall nevertheless be deemed to have been rendered in accordance with the contract despite possible restrictions. At the Client's request, the Contractor shall undertake to remedy the defect at the Client's expense.
- 6.3. The Client shall support the Contractor in the rectification of defects and provide all necessary information. The Client shall immediately notify the Contractor in writing or by e-mail of any defects that have occurred. The Client shall bear the additional costs incurred in the rectification of defects due to late notification.
- 6.4. The warranty period shall be six (6) months. The Client's rights under the warranty and the claims arising therefrom shall expire in any case 1 month after the end of the respective warranty period. Any defense against payment claims within the meaning of Section 933 (3) ABGB is excluded.
- 6.5. All updating obligations pursuant to Section 7 VGG in conjunction with Section 1 (3) VGG shall be excluded in its entirety, unless expressly agreed otherwise. Hence only the relevant agreements between the contracting parties shall apply to updates..
- 6.6. The provisions of this point shall apply mutatis mutandis to any deliveries of hardware or software products from the Contractor to the Client. § Section 924 ABGB "Presumption of Defectiveness" is excluded by mutual agreement. As regards any third-party hardware or software products provided to the Client by the Contractor, the respective warranty conditions of the manufacturer of these products shall take precedence over the provisions of this point. The Contractor shall retain title to all hardware and software products supplied by it until payment has been made in full.

7. Contractual penalty

- 7.1. The Contractor shall adhere to the fulfilment levels or recovery times specified in the SLA according to priorities. If the Contractor exceeds the time limits for restoration specified in the SLA, the Contractor shall pay hour-based or fraction of hour-based penalties to the Client until actual restoration (fulfilment) as specified in the SLA:

The above-mentioned annual penalties are limited to 20% of the total annual fee.

No further claims for damages shall be asserted, except for cases of intent or gross negligence.

Any excess of such penalty limits shall be immediately notified to the Contractor in writing.

8. Liability

- 8.1. The Contractor shall only be liable to the Client for damage for which it is demonstrably responsible in the event of gross negligence and wilful intent. This shall also apply mutatis mutandis to damage attributable to third parties engaged by the Contractor. In the event of personal injury for which the Contractor is responsible, the Contractor shall be liable without limitation.
- 8.2. Liability for indirect damages - such as loss of profit, costs associated with business interruption, loss of data or third-party claims – shall be expressly excluded.
- 8.3. Claims for damages shall become time-barred in accordance with the statutory provisions, but no later than one year after the damage and the damaging party become known.
- 8.4. If the Contractor performs the work with the assistance of third parties and warranty and/or liability claims against these third parties arise in this context, the Contractor shall assign these claims to the Client.
- 8.5. If data storage has been expressly agreed as a service, in deviation from point 8.2 liability for the loss of data shall not be excluded, but shall be limited to a maximum of EUR 10 % of the total order amount per claim, up to a maximum of EUR 15,000. Warranty claims and claims for damages by the Client beyond those specified in this contract are excluded irrespectively of the legal basis .
- 8.6. The Contractor shall not be liable for disruptions to the telecommunications infrastructure, including telephone lines.

9. Remuneration

- 9.1. The remuneration and conditions to be paid by the Client are set out in the contract. The statutory value added tax will be charged additionally.

- 9.2. Travelling times of the Contractor's employees shall be considered working time. Travelling time shall be remunerated at the agreed hourly rate. The aforementioned rates shall change in accordance with the price escalation clause in Section 9.5. In addition, travelling expenses and any accommodation costs shall be reimbursed by the Client according to actual expenditure. Reimbursement of the necessary travel, accommodation and catering costs shall be made on presentation of receipts (copies).
- 9.3. The Contractor shall be entitled at any time to make the provision of services dependent on the provision of advance payments or the provision of other securities by the Client in an appropriate amount.
- 9.4. Unless otherwise contractually agreed, one-off payments shall be invoiced after the service has been provided and ongoing payments shall be invoiced quarterly in advance. Invoices issued by the Contractor, including VAT, shall be payable within 14 days of receipt of the invoice without any deductions and free of charges. The terms of payment stipulated for the entire order shall apply analogously to partial invoices. A payment shall be deemed as made on the day on which it is available to the Contractor. If the Client is in arrears with its payments, the Contractor shall be entitled to charge statutory default interest and any required collection costs.
- 9.5. Current remuneration is based on the collective agreement salary of an employee of companies in the services in automatic data processing and information technology sector on the experience level for special activities (ST2).
- 9.6. The Client is only permitted to offset a counterclaim recognised by the Contractor or legally established. The Client shall not be entitled to a right of retention.
- 9.7. All tax liabilities arising from the contractual relationship, such as legal transaction fees or withholding taxes, shall be borne by the Client.
Should the Contractor be held liable for such charges, the Client shall indemnify and hold the Contractor harmless.

10. Force majeure

- 10.1. The non-fulfilment of obligations on time or in due manner as a consequence of force majeure, such as war, terrorism, natural disasters, fire, strike, lockout, embargo, sovereign intervention, failure of the power supply, failure of means of transport, failure of telecommunications networks or data lines, changes in the law affecting the services after conclusion of the contract or other non-availability of products, shall not constitute a breach of contract.

11. Rights of use to software products and documents

- 11.1. Any surrender of software products to the Client by the Contractor or any the Client is enabled to use software products as part of the services, the Client shall be entitled to the non-exclusive, non-transferable, non-sublicensable right, limited to the term of the contract, to use the software products in unmodified form.
- 11.2. When using software products in a network, a licence is required for each simultaneous user. When using software products on "stand-alone PCs", a licence is required for each PC.
- 11.3. For third-party software products provided to the Client by the Contractor, the respective licence terms of the manufacturer of these software products shall take precedence over the provisions of this section.
- 11.4. Unless a separate agreement is made, no further rights to software products shall be transferred to the Client.
The Client's rights according to §§ 40d, 40e UrhG are not affected by this.
- 11.5. All documents provided to the Client by the Contractor, in particular the documentation for software products, must not be reproduced or distributed in any way, whether for payment or free of charge.
- 11.6. The documentation and passwords required for operation shall be handed over on site when the system is handed over. The system and administrator passwords as well as the system documentation shall be handed over immediately after receipt of full payment and request by the Client, provided that this does not affect other agreements regarding the service contract and system warranty.

12. Term of the contract

- 12.1. The contract shall come into force upon signing by both contracting parties and shall run for an indefinite period. The contract may be terminated by either party by registered letter subject to a notice period of 6 months, but no earlier than at the end of the minimum term agreed in the contract.
- 12.2. Each contracting party is entitled to terminate the contract prematurely and without notice by registered letter for good cause. Good cause shall be deemed to exist in particular if the other contracting party breaches material obligations under the contract despite a written warning and threat of termination or if the services of the other contracting party are hindered or prevented for a period of more than six months as a result of force majeure.
- 12.3. Upon termination of the contract, the Client shall immediately return all documents and documentation provided to it by the Contractor to the latter.

- 12.4. Upon request, the Contractor shall support the Client at the end of the contract in returning the services to the Client or a third party nominated by the Client at the Contractor's applicable hourly rates.

13. Data protection

- 13.1. The data protection declaration within the meaning of Art. 13 and 14 GDPR is attached to the order.

14. Secrecy

- 14.1. Each contracting party warrants to the other that it will treat all trade secrets disclosed to it by the other party in connection with this contract and its performance confidentially and will not disclose them to third parties unless they are generally known, or were already known to the recipient beforehand without any obligation of confidentiality, or are disclosed or made available to the recipient by a third party without any obligation of confidentiality, or were demonstrably developed independently by the recipient, or must be disclosed on the basis of a legally binding official or judicial decision.
- 14.2. The subContractors associated with the Contractor shall not be deemed third parties insofar as they are subject to a confidentiality obligation corresponding to the content of this point.

15. Non-solicitation clause

- 15.1. During the term of the contract and up to one year after the end of the contract, the Client shall not canvas any employees employed by the Contractor to provide the services, either itself or via third parties. For each case of infringement, the Client undertakes to pay the Contractor a contractual penalty in the amount of twelve times the gross monthly salary that the employee in question last received from the Contractor, but at least the collective agreement salary of an employee of companies in the field of services in automatic data processing and information technology on the experience level for special activities (ST2).

16. Final provisions

- 16.1. In the contract, the contracting parties shall specify knowledgeable and competent employees who can make or initiate the necessary decisions.
- 16.2. Amendments and additions to the contract shall be made in writing. This also applies to the cancellation of this formal requirement.
- 16.3. Should one or more provisions of the contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid provision that comes as close as possible to the economic purpose of the invalid or unenforceable clause.

- 16.4. Any disposal of the rights or obligations existing under the contract shall require the prior written consent of the other contracting party. However, the Contractor shall be authorised to transfer the contract to a company affiliated with the Contractor under group law without the Client's consent.
- 16.5. Unless otherwise agreed, the statutory provisions applicable between entrepreneurs shall apply exclusively in accordance with Austrian law, even if the order is carried out abroad. Any disputes shall be subject exclusively to the local jurisdiction of the court with subject-matter jurisdiction for the Contractor's registered office.

The Association of Management Consulting, Accounting and Information Technology recommends the following mediation clause as a business-friendly means of dispute resolution:

In the event of disputes arising from this contract that cannot be settled amicably, the contracting parties agree by mutual consent to use registered mediators (ZivMediatG) from the list of the Ministry of Justice specialising in commercial mediation to settle the conflict out of court. If no agreement can be reached on the choice of commercial mediators or on the content of the dispute, legal action will be initiated at the earliest one month after the failure of the negotiations.

In the event that mediation is brought about or is cancelled, Austrian law shall apply in any court proceedings that may be initiated.

In accordance with the agreement any necessary expenses incurred as a result of prior mediation, in particular including those for a consulted legal advisor, can be claimed in court or arbitration proceedings as "pre-litigation costs".

Accompanying sheet to the General Terms and Conditions for Operator Services in Information Technology (B2B)

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These GTC are merely to be understood as a sample sheet for GTC. The provisions contained herein are suggestions with possible deviations in individual cases. If deviating provisions are agreed in a specific contract, it is generally helpful to clearly indicate which provision of the GTC specifically amends the contractual agreement (e.g.: "this provision replaces point x. of the GTC") in order to avoid misunderstandings. The use of the sample sheet is no substitution for consultation by a legal advisor.

Please note as follows:

Cloud services

For cloud services users these services are similar classic IT services outsourcing. Cloud services agreements should therefore contain provisions that are also common in a classic IT outsourcing contract. A catalogue of recommended contractual elements that should be included in general terms and conditions or service level agreements (SLA) of cloud service companies can be found at www.ubit.at
[Checklist for cloud contracts](#)

Validity

In principle, contractual agreements take precedence over provisions contained in GTC. In addition, the GTC shall only become part of a contract if this is (demonstrably) agreed - preferably in writing. At the same time (before conclusion of the contract), the GTC must be communicated to the Client. Any GTC transmitted after the conclusion of a contract on invoices, delivery notes or the like is generally ineffective. Disadvantageous, unusual and surprising clauses in GTC, i.e. clauses that the Client need not expect in view of the circumstances surrounding the contract and the appearance of the document, shall not become part of the contract unless the Client has been expressly (demonstrably) informed thereof. Traders who regularly use GTC must display the GTC in the premises used for Client traffic.

If the Client and the Contractor each refer to the validity of their own GTC, there is a disagreement in as far as the GTC contradict each other; this is generally irrespective of the clause contained in point 1.2. In most cases, the contract will nevertheless be concluded because the contracting parties are/were in agreement on the essential points of the contract (usually: service and price); the only inapplicable parts are the contradictory clauses (partial invalidity). The points not regulated by the contract must then be determined by statutory provisions or supplementary interpretation. To ensure validity of the GTC in the event of disputes wherever possible, the GTC nevertheless contain the

"defense clause" in accordance with point 1.2.

Liability

The Contractor shall be liable to the Client only for personal injury, gross negligence, and wilful intent.

Remuneration

The contract shall specify the fee agreed with the Contractor. The fee shall be due upon invoicing by the Contractor. Any cash outlays and expenses incurred shall be additionally reimbursed by the Client upon presentation of the invoice.

Data protection & confidentiality

The controller, the processor and their employees shall keep secret all and any personal data known to them from data processing that has been entrusted to them or has become accessible to them exclusively on the basis of their professional employment, without prejudice to other statutory confidentiality obligations, unless there is a legally permissible reason for transferring the entrusted or accessible personal data (data secrecy).

Employees must be informed of this and of any consequences of a breach.

It is recommended that data protection clauses be included in the DSE.

Care must be taken to ensure that any consents under data protection law are obtained properly and that information obligations are fulfilled in full and in good time. In addition, an order processing contract must be concluded if data is processed for the Client as part of the order (which can be assumed in this sector). Samples and further details can be found at: www.wko.at/datenschutz or at www.ubit.at.

Please note: In accordance with the nature of the contract for work and labour, the Contractor is entitled to be represented by other independent third parties in producing the work. This must be distinguished from the use of the Contractor's own auxiliary persons (such as employees of the Contractor), who are in any case attributable to the Contractor.

In terms of data protection law, however, if you wish to pass on data to a sub-processor as part of the order, you must have agreed this transfer with the Client. This is either regulated in the processor contract or in a separate agreement.

BaFG Accessibility Act

With the entry into force of the BaFG, barrier-free design will be included in the normally required characteristics of products and/or services that fall within the scope of the BaFG after 28 June 2025. Even though service contracts concluded before 28 June 2025 can go forward without any changes until their expiry, even if they are not barrier-free, this transitional period ends on 28 June 2030. Before that date contracting parties must either adapt their existing contracts to BaFG accessibility requirements or terminate them.

Miscellaneous

The place of jurisdiction would have to be explicitly agreed again in the contractual agreement with the Client.

Note:

We would like to point out that the masculine form is used on these pages for reasons of easier readability. All statements apply equally to the female form.