

**General Terms and Conditions
for the Sale and Delivery of Software Support Services (B2B)**

2024 version

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

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1. Scope and validity of the contract

- 1.1. The following terms and conditions shall apply to all services and deliveries provided by the Contractor under this contract for the computer systems installed in Austria. The Client's terms and conditions of purchase are hereby excluded for the legal transaction in question and the entire business relationship. Offers are always subject to change.

2. Scope of services

- 2.1. Unless otherwise agreed, the Contractor shall perform the contractual services at the location of the computer system or at the Contractor's business premises during the Contractor's normal working hours, at the Contractor's discretion. If, in exceptional cases and at the request of the Client, services are provided outside normal working hours, such additional costs shall be invoiced separately. The Contractor shall be responsible for selecting the employee providing the contractual services and shall be authorised to engage third parties for this purpose.
- 2.2. The Contractor undertakes to provide the contractual software programs in accordance with the scope of services of the following contractually agreed support class:

Support class A:

- Information service:
The Client shall be informed about new programme versions, available updates, programme developments, etc.
- Hotline service:
The Contractor shall be available to the Client within the Contractor's agreed hotline hours for advice for occasional problems in connection with the use of the contractual software programmes. In the event of a repeated use of this consulting facility for similar problems, the Contractor shall be entitled to make the provision of further contractual consulting services dependent on additional, chargeable training measures outside the scope of this contract.
- Archiving and provision of the contractual software programmes:
The Contractor undertakes to archive the software programs developed by it and covered by the contract in computer-readable form as well as the documentation to the extent necessary to fulfil the obligations under this contract and, if necessary, to make them available to the Client in accordance with the provisions of the contract on which the purchase is based. Reference is made to Section 2.9 of the GTC for the sale and delivery of organisational and programming services and licences to use software products (B2B).

Support class B:

- Update Service:
The Contractor shall provide the Client with the programme updates provided by the manufacturer on the date specified by the Contractor. These include corrections of errors, elimination of any programme problems that do not occur either during the test run or during practical use within the warranty period,

improvements to the scope of services, changes to the software programmes due to legal changes.

Legal changes that lead to new programme logic, i.e. changes to existing functions that lead to new programmes and programme modules, as well as any necessary hardware extensions, are not covered by the services of this contract. These programmes are offered to the Client separately in addition to the necessary data carriers and documentation.

Support class C:

- Installation of programme updates:

The Contractor shall be responsible for installing or setting up the new programme updates on the computer system covered by the contract.

- On-site troubleshooting:

If problems under the contractually specified scope of services cannot be solved by hotline service, remote support, etc., the Contractor shall treat the problems at the location of the computer system.

- 2.3. A treatable error is defined as contractual software program behaviour deviant from the description of services/documentation in the respectively latest version and reproduceable by the Client.

Notices of defects shall be addressed to the Contractor in writing. For the purpose of precise investigation of any errors that may occur, the Client shall make the computer system used by it (in systems in an online network with other computers, including the respective connection), software programmes, protocols, diagnostic documents and data available to the Contractor free of charge to a reasonable extent for test purposes during normal working hours and to support the Contractor. Identified errors in the Contractor's domain shall be resolved by the Contractor within a reasonable period of time:

The Contractor shall be released from this obligation in cases of prevention by defects in the Client's domain which are not remedied by the Client.

The error is solved through a software update or appropriate alternative solutions.

3. Services not covered by this contract

- 3.1. Unless explicitly stipulated otherwise in this contract, the costs for travelling, accommodation and travel time for the Contractor's persons commissioned to perform the service.
- 3.2. In the event of unauthorised use of services, the Contractor shall invoice the Client at the applicable cost rates for the costs incurred.
- 3.3. Services caused by changes to the operating system, hardware modifications and/or changes to non-contractual, mutually programme-dependent software programmes and interfaces.
- 3.4. Individual programme adaptations or reprogramming.

- 3.5. Programme changes due to changes in legal regulations if they require a change in the programme logic.
- 3.6. The Contractor shall be released from all obligations arising from this contract if programme changes are made to the contractual software programmes by employees of the Client or third parties without the prior consent of the Contractor, or if the software programmes are not used as intended.
- 3.7. A barrier-free design, e.g. as defined by the Federal Act on Equal Opportunities for Persons with Disabilities (Federal Disability Equality Act - BGStG), the Federal Act on Barrier-free Access to Websites and Mobile Applications of the Federal Government (Web Accessibility Act - WZG) or the Federal Act on Accessibility Requirements for Products and Services (Accessibility Act - BaFG), which comes into force on 28 June 2025; this can be requested separately.
- 3.8. The correction of errors caused by the Client or third parties.
- 3.9. Loss or damage caused directly or indirectly by actions or omissions during operation by the Client or user.
- 3.10. Data conversions, restoration of databases and interface customisations.

4. Prices

- 4.1. All prices are quoted in euros excluding VAT. The prices quoted are ex place of fulfilment. The costs of programme carriers (e.g. memory sticks, DVDs, CDs, magnetic tapes, magnetic discs, floppy discs, streamer tapes, magnetic tape cassettes, etc.) as well as documentation and contract fees shall be invoiced separately.
- 4.2. For services that can be provided at the Contractor's business premises, but are exceptionally provided at the Client's premises at the Client's request, the Client shall bear the costs of travel, accommodation, and travelling time for the Contractor's persons commissioned to perform the service.
- 4.3. In the event of increases in labour and material costs or other costs and charges occurring after the conclusion of the contract, the Contractor shall be entitled to increase the lump sums stated overleaf accordingly and to charge them to the Client from the beginning of the month following the increase. The increases shall be deemed accepted by the Client from the outset if they do not exceed 10% per annum.
- 4.4. All fees and taxes (in particular VAT) shall be calculated on the basis of the applicable legal situation. Any additional taxes or duties subsequently imposed by the tax authorities shall be borne by the Client.

5. Delivery dates

- 5.1. The Contractor shall endeavour to respond to the Client's enquiries within a reasonable time during the Contractor's normal working hours.
- 5.2. The Client shall not be entitled to withdraw from the contract or claim compensation for damages due to exceeding the promised deadlines.
- 5.3. Partial deliveries and advance deliveries are permitted.

6. Payment

- 6.1. The agreed lump sums are payable in advance by the Client for the calendar year/partial year.
- 6.2. Invoices issued by the Contractor are due 14 days after the invoice date without deduction and free of charges.
- 6.3. Compliance with the agreed payment dates is an essential condition for the delivery or fulfilment of the contract by the Contractor. Failure to comply with the agreed payments shall entitle the Contractor to suspend ongoing work and withdraw from the contract. All associated costs and loss of profit shall be borne by the Client. Statutory default interest for business transactions shall be charged for late payments. If two instalments are not paid on time, the Contractor shall be entitled to enforce the loss of deadlines and to activate a due date on any accepted deliveries made.
- 6.4. The Client shall not withhold payments due to incomplete overall delivery, guarantee or warranty claims or complaints.

7. Contract duration

- 7.1. The contractual relationship, which presupposes a professional installation of the duly acquired contractual software programme, begins with the signing of the contract and is concluded for an indefinite period. This contract may be cancelled in writing by one of the contracting parties subject to a notice period of 3 months to the end of a calendar year, but at the earliest after the end of the 36th month of the contract. If the contractual software programme is demonstrably taken out of service or ceases to exist, the contractual relationship may be terminated prematurely subject to a three-month notice period. In this case, the aliquot part of the annual lump sum for the unused service shall be transferred to an Austrian bank account to be specified by the Client.

8. Performance disruptions

- 8.1. 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 inadequately, i.e. with significant deviations from the agreed quality standards, the Contractor shall be obliged to immediately begin to rectify the

defects 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.

- 8.2. 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 such cases, the services rendered by the Contractor shall nevertheless be deemed rendered in accordance with the contract despite possible restrictions. At the Client's request, the Contractor shall undertake to rectify the defect at the Client's expense.
- 8.3. The Client shall support the Contractor in the rectification of defects and provide all necessary information. Any defects that occur must be reported to the Contractor by the Client immediately in writing or by e-mail. The Client shall bear the additional costs incurred in rectifying the defect as a result of late notification.
- 8.4. The warranty period is 6 months. However, notices of defects are only valid if they concern reproducible defects and if they are documented in writing within 4 weeks of delivery of the agreed service. In the event of a warranty claim, rectification shall in any case take precedence over price reduction or cancellation. In the event of a justified complaint, the defects shall be rectified within a reasonable period of time, whereby the Client shall enable the Contractor to take all necessary measures to investigate and rectify the defects. The reversal of the burden of proof, i.e. the Contractor's obligation to prove its innocence regarding the defect, is excluded. The Client's rights under the warranty and the claims arising therefrom shall in any case expire one (1) month after the end of the warranty period. The possibility of a defense against the claim for payment within the meaning of Section 933 (3) ABGB is excluded.
- 8.5. The update obligation pursuant to Section 7 VGG in conjunction with Section 1 (3) VGG is excluded in its entirety, unless expressly agreed otherwise. Hence only the relevant agreements between the contracting parties shall apply to updates, such as those made through the definition of support classes (see also point 2) and additional individual agreements.

9. Liability

- 9.1. The Contractor shall only be liable to the Client for damages for which it is demonstrably responsible in the event of gross negligence. 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.
- 9.2. Liability for indirect damages - such as loss of profit, costs associated with business interruption, loss of data or third-party claims - is expressly excluded.

- 9.3. Claims for damages shall become time-barred in accordance with the statutory provisions, but no later than one year from the date on which the damage and the damaging party become known.
- 9.4. If the Contractor performs the services with the assistance of third parties and warranty and/or liability claims arise against such third parties in this context, the Contractor shall assign these claims to the Client. In this case, the Client shall give priority to these third parties.
- 9.5. Wherever obligations cannot be fulfilled on time or properly due to 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, this shall not constitute a breach of contract.

10. Location

- 10.1. The location of the computer systems covered by the contract is specified in the contract. In the event of a change of location of the computer systems, the Contractor shall be entitled to redefine the lump-sum cost rate or to terminate the contract prematurely.

11. Copyright and utilisation

- 11.1. All copyrights to the agreed services (programmes, documentation, etc.) shall belong to the Contractor or its licensors. After payment of the agreed fee, the Client shall be granted the exclusive right to use the software exclusively for its own purposes, only for the hardware specified in the contract and to the extent of the number of licences acquired for simultaneous use on several workstations. Only a licence to use the work is acquired through this contract. Distribution by the Client is excluded in accordance with copyright law. The Client's co-operation in the production of the software shall not result in the acquisition of any rights beyond the use specified in the present contract. Any infringement of the Contractor's copyrights shall result in claims for damages, whereby full satisfaction shall be provided in such a case.
- 11.2. The Client is permitted to make copies for archiving and data backup purposes on condition that the software does not contain any express prohibition by the licensor or third parties and that all copyright and proprietary notices are transferred unchanged in these copies.
- 11.3. If interfaces need to be disclosed to establish interoperability of the respective software, the Client shall make a respective request to the Contractor and reimburse the costs. If the Contractor does not fulfil this request and decompilation occurs under copyright law, the results are to be used exclusively to establish interoperability. Any misuse shall result in compensation for damages.

12. Loyalty

- 12.1. The contracting parties undertake to be mutually loyal. They shall refrain from any canvassing and employment, including via third parties, of employees of the other contracting party who have worked on the realisation of the orders for the duration of the contract and for 12 months after termination of the contract. The contracting party in breach shall pay liquidated damages in the amount of one year's salary of the employee.

13. Secrecy

- 13.1. The Contractor shall oblige its employees to comply with the provisions of Section 6 of the Data Protection Act.

14. Final provisions

- 14.1. 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 competent court for the Contractor's place of business. Non-compliance with essential parts of the contract shall entitle the contracting parties to prematurely terminate the contract without notice.
- 14.2. Amendments and additions to the contract must be made in writing. This also applies to the cancellation of this formal requirement.
- 14.3. 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.
- 14.4. 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 is authorised to transfer the contract to a company affiliated with the Contractor under group law without the consent of the Client.
- 14.5. The Contractor shall be entitled to use third parties in whole or in part to fulfil its obligations.

The Trade Association of Management Consultancy, 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 by mutual agreement, the contracting parties shall agree by mutual consent on the out-of-court settlement of the conflict by registered mediators (ZivMediatG) specialising in commercial mediation from the list of the Ministry of Justice to be consulted. If no agreement is reached on the selection of business mediators or the content of the agreement can be reached, the earliest one month from the date of legal steps initiated in the event of failure of the negotiations.

In the event that mediation does not take place or is cancelled, the following applies in Austrian law shall apply in the event of any legal proceedings.
All necessary measures initiated as a result of a previous mediation
Expenses, in particular also those for a consultant
legal advisors, can be agreed in a court or arbitration proceedings.
arbitration proceedings can be claimed as "pre-litigation costs".

Accompanying sheet to the General Terms and Conditions for the Sale and Delivery of Software Support Services (B2B)

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These GTC are merely to be understood as a model for the drafting of GTC. The provisions contained herein are suggestions that may be deviated from in individual cases. If deviating provisions are agreed in a specific contract, to avoid misunderstandings 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"). The use of the template cannot substitute consulting by a legal advisor.

Please note as follows:

Validity

In principle, contractual agreements take precedence over the provisions contained in the GTC. In addition, the GTC shall only become part of the 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. Transmission of the GTC after conclusion of the contract on invoices, delivery notes or the like is generally ineffective. Disadvantageous, unusual and surprising clauses in the 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 of this. Traders who regularly use GTC must display the GTC on the premises used for customer traffic.

Data protection & confidentiality

The controller, the processor and their employees must keep confidential all personal data 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 customer 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 services, the contractor is entitled to be represented by other independent third parties in the

production of the work. This is to be distinguished from the utilisation of the contractor's own auxiliary persons (e.g. employees of 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.

Accessibility Act BaFG

With the entry into force of the BaFG, the barrier-free design after 28 June 2025 will be included in the normally required characteristics of products and/or services that fall within the scope of the BaFG. Although service contracts already concluded before 28 June 2025 may continue unchanged until their expiry, even if they are not barrier-free, this transitional period ends on 28 June 2030. Until then, the contracting parties must either adapt their existing contracts to the accessibility requirements of the BaFG through amendments or terminate them.

Miscellaneous

The place of jurisdiction shall again be explicitly specified in the contractual agreement with the customer.

Note:

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