

General Terms and Conditions of Osthus GmbH

(as per 02/2015)

§ 1 Scope

- (1) These General Terms and Conditions apply to all contracts of Osthus GmbH (hereinafter referred to as "Osthus") with the customer (hereinafter referred to as "Customer") on the creation, licensing and/or maintenance of software and related consultancy services as well as other IT services. The General Terms and Conditions apply only vis-à-vis entrepreneurs who, upon entering into the legal transaction, are acting in their commercial or self-employed capacity and vis-à-vis legal entities under public law and special public funds.
- (2) Osthus shall not accept any terms and conditions of the Customer that are inconsistent or deviate from these Terms and Conditions, unless Osthus expressly approved the validity thereof in writing. Individual agreements remain unaffected by the provisions above.

§ 2 Offer and conclusion of contract

- (1) Except where expressly otherwise stated by Osthus, offers are without obligation and non-binding. A contract shall materialise only once confirmed in writing by Osthus or upon the first act of fulfilment.
- (2) If expenses are stated in days in the offer, one day shall be equivalent to 8 hours of work (cf. also § 7 Remuneration in this context).

§ 3 Service description and changes to services

- (1) The service description agreed and defined in the individual contract is authoritative for the nature and scope of the service to be provided by Osthus.
- (2) Insofar as the requirements of the Customer are not yet apparent from the task specified in the contract, Osthus shall define the details thereof with the support of the Customer and shall issue appropriate specifications (referred to as "Specifications" or "Software Design Specification"). The Specifications approved by the Customer are binding for all further work.
- (3) The Specifications can be refined or amended in the course of conversion into software in coordination with the Customer. If Osthus recognises that the task set contains errors, is not clear or cannot be executed with reasonable efforts, Osthus shall immediately notify the Customer thereof. The latter shall then immediately decide how to proceed.
- (4) The written approval of Osthus is required if the Customer wishes to change or expand the tasks set as a whole or in parts. Osthus shall refuse to give such approval only if the changes/expansions requested are unreasonable for Osthus, particularly in terms of the effort involved and the scheduling. Osthus is entitled to make its approval contingent on a suitable adjustment to the terms of contract, particularly on an increase in the remuneration and/or a postponement of the deadlines.
- (5) If the change request of the Customer requires an extensive examination and details as to whether, how and on what terms the change can be implemented, Osthus may demand separate remuneration for this.

- (6) Agreements on changes to the Specifications/service description must be in writing. If the Customer requests a change verbally, Osthus may confirm this in writing. The change request is considered agreed if the Customer does not immediately object to the written confirmation. Minutes about such discussions or reports on the project status shall also be sufficient provided they are signed or approved by both parties.

§ 4 Duties to cooperate of the Customer, documents

- (1) The operating conditions for the software shall be defined in the individual contract to be concluded between the parties. Osthus shall be released from its obligations under the contract, particularly from its warranty obligation, as long as the Customer has not created the operating conditions specified in the contract.
- (2) The Customer is obliged to support Osthus to a reasonable extent and to create all the prerequisites in its sphere of operations that are required to properly execute the order. In particular, the Customer shall provide system capacity for the development and testing of the software to a reasonable extent free of charge. The Customer shall provide the necessary documents and information to Osthus completely and in a timely manner.
- (3) If the Customer fails to perform a duty to cooperate for which it is responsible despite receiving a reminder to do so and being set a deadline for this, Osthus shall be entitled to instantly terminate the contract. Irrespective of the assertion of this right of termination Osthus shall be entitled to receive compensation for the damage or for the additional expenses incurred as a result of the Customer's failure to cooperate.
- (4) Only the Customer shall be liable for the rightfulness of the use of documents which the Customer provides to Osthus. Osthus shall not be obliged to check whether use is rightful. If a claim is filed against Osthus by third parties to cease and desist or for damages as a result of the use of such documents, the Customer shall indemnify Osthus from all claims upon first demand.

§ 5 Delivery time, rights of the Customer in case of delay

- (1) Delivery periods or delivery dates are always non-binding, unless expressly otherwise agreed.
- (2) Commencement of the delivery time stated requires that all questions have been clarified in advance. If down payments of the Customer have been agreed, the delivery period shall commence only once the down payment has been received. The observance of the delivery obligation of Osthus requires that the Customer has performed its obligations properly in a timely manner. The right is reserved to plea non-performance of the contract.
- (3) Unless otherwise agreed, Osthus is entitled to effect partial deliveries at any time, if this can be reasonably expected of the Customer.
- (4) Insofar as a cause for which Osthus is not responsible adversely affects compliance with a deadline, Osthus may demand that the deadline is postponed by a reasonable period. If expenses increase and the cause thereof lies within the sphere of responsibility of the Customer, Osthus may also demand compensation for its additional expenses.
- (5) If Osthus exceeds the non-binding delivery period stated by more than 6 weeks, the Customer may demand delivery from Osthus. Upon receipt of this demand, Osthus shall be in delay. If a binding delivery date or a binding delivery period is exceeded, Osthus shall already be in delay upon exceeding the delivery date or the delivery period.

- (6) Claims for damages of the Customer based on a delay in performance or in lieu of performance shall be valid only within the scope of the provision set out under § 10. Osthus shall not be liable if the damage would have occurred even if it had effected delivery in due time.

§ 6 Acceptance

- (1) The Customer undertakes to check whether the software including the documentation and the installation work (if agreed) are in conformity with the contract and to declare acceptance thereof in writing if these are conformant. The checking period shall amount to two weeks, unless otherwise agreed, and shall commence upon handover / installation of the software. Minor defects shall not entitle the Customer to refuse acceptance.
- (2) The software and any installation work shall be considered accepted 2 weeks after the expiry of the checking period if the Customer has not given notice in writing of any significant faults in the software or in the installation by this time. The software shall also be considered accepted if the Customer uses the software productively.
- (3) Insofar as partial deliveries were agreed, each partial delivery shall be subject to acceptance by the Customer. The correct interaction of all parts shall be the subject of the acceptance test of the final partial delivery.

§ 7 Remuneration and terms of payment

- (1) Unless otherwise specified in the contract, receivables shall become due upon being invoiced and shall be payable net (without deduction) within 14 days from the date of the invoice. The timeliness of payment is determined by the date on which the payment is received by Osthus. Value-added tax is not included in prices. It shall be added to prices and shall be stated separately in the invoice.
- (2) If a fixed price is agreed, support services (particularly installation, instruction / training, consultancy) shall be remunerated separately, unless these are expressly included in the fixed price.
- (3) The contractually agreed daily rate relates to a working time of eight hours of work per day (Monday to Friday). Any personnel required on Saturdays, Sundays and public holidays must be requested separately and in a timely manner by the Customer.
- (4) Unless expressly otherwise agreed, travelling expenses and travelling times are not included in the agreed price and shall therefore be paid separately. Except where expressly otherwise agreed, travelling times shall be treated as working time and shall be invoiced based on the contractually agreed daily rate. Proof shall be furnished – as far as possible – of travelling expenses and other ancillary expenses based on verifiable receipts and documents each month and invoiced to the Customer. The statutory value-added tax shall be stated separately.
- (5) Osthus reserves the right to demand advance payment or security at the amount of the invoice value of a delivery if circumstances subsequently occur or become known which make the collection of the receivables of Osthus appear to be at risk. If the Customer does not furnish security or make an advance payment within a reasonable period after such demand, Osthus is entitled to withdraw from the contract.
- (6) The Customer has a right to set off counterclaims only if these have been declared legally valid by a court of law, are uncontested or have been accepted by Osthus. The Customer shall have a right of retention only if the claims asserted are based on the same contractual relationship.

- (7) Notwithstanding other rights of Osthus, Osthus shall be entitled to retain any and all outstanding deliveries based on the contract or based on other similar contracts in the business relationship with the Customer in the event of a delay in payment by the Customer until payment in full of the invoice amount.
- (8) The acceptance of cheques or bills and the assignment of payment obligations of the Customer to third parties require a separate contractual agreement. Even where appropriately agreed, cheques and bills shall be accepted only as conditional payment and not as actual payment and shall not signify any deferment of the original receivable.

§ 8 Retention of title

- (1) Osthus retains title to the delivery until satisfaction of all liabilities under the current business relationship with the Customer.
- (2) If the value of the security existing in favour of Osthus exceeds its total claim by more than 10%, Osthus is obliged, upon demand by the Customer, to release items of security in excess of 10% at the option of Osthus.
- (3) In case of conduct contrary to contract on the part of the Customer, particularly in the event of a delay in payment, Osthus shall be entitled to take back the purchased item after setting a reasonable period – unless this is unnecessary in a particular case. The taking back of the purchased item by Osthus shall be considered withdrawal from the contract.

§ 9 Warranty, limitation periods

- (1) Osthus warrants that when used according to contract, the software including the documentation meet the requirements of the intended task and do not have any defects which make it unsuitable for use or considerably reduce its suitability for use. Special agreements regarding the features of the software shall not constitute any guarantees of quality or durability.
- (2) A warranty that the software is suitable for the purposes of the Customer and interacts with the software existing at the Customer is excluded, unless expressly otherwise agreed between the parties.
- (3) The warranty claims of the Customer shall not include software which the Customer does not use according to contract, i.e. particularly software that the Customer modifies or does not use in the system environment agreed in the contract, unless the Customer furnishes proof that such use is not the cause of the defect notified.
- (4) The prerequisite for warranty claims is the ability to reproduce or detect the defects.
- (5) The Customer shall notify defects without delay, stating the information that it has on such defects and which is useful for the detection thereof and giving an exact description of the fault in text form (e-mail, fax). The Customer shall take all reasonable measures to facilitate a detection of the defects and their causes, particularly send an appropriate data extract and make machine time and test times available upon request by Osthus. A remote diagnosis and corrections can be carried out if the Customer has the facilities required for this.
- (6) The warranty period is 12 months from acceptance in accordance with § 6.

- (7) If there are any material defects, Osthus shall perform its warranty obligations through supplementary performance by either providing a new software version without defects to the Customer or, at its option, by rectifying the defect. The rectification of the defect may also consist in Osthus showing the Customer possible and reasonable ways to avoid the effects of the defect.

The last version of the software adopted by the Customer shall be subject to a warranty. The Customer shall adopt a new version if this serves to avoid or rectify defects. The Customer shall not be obliged to adopt a new version if this cannot be reasonably expected of it because the new version differs significantly from the specifications agreed in the contract. If the Customer does not adopt a new version for this reason, in lieu of supplementary performance its other rights under paragraph (8) shall remain unaffected.

- (8) If Osthus does not successfully complete the rectification of defects within a reasonable period the Customer may set a grace period for Osthus to do so. After the expiry of the grace period in vain, the Customer may demand a reasonable reduction of the remuneration or terminate the contract or in the event of a one-time payment of the remuneration, demand to withdraw from the contract. Further claims, particularly claims for the reimbursement of expenditures or claims for damages based on defects or consequential damage, shall be valid – provided that the legal requirements have been met – only within the scope of the provision under § 10.
- (9) In case a new version of the software is provided, the replaced version shall be destroyed or upon demand, returned to Osthus.
- (10) Liability for guarantees as to quality and durability as well as liability in case of the fraudulent concealment of defects, in case of intent, gross negligence and in case of injury to life, body or health shall not be affected by the above provisions (particularly paragraph (6)). In these cases, legal provisions and/or warranty periods shall apply.
- (11) Osthus may demand compensation for its efforts insofar as Osthus has carried out work as a result of a defect being notified without any defect existing. Compensation shall be paid particularly also for the additional efforts entailed for Osthus to rectify defects as a result of the Customer failing to properly perform its duties to cooperate or having operated the software improperly.

§ 10 Liability

- (1) In all cases in which Osthus is obliged to pay damages or reimburse expenses based on contractual or legal claims, Osthus shall accept liability only insofar as it, its executive employees and vicarious agents are at fault for acting with intent, gross negligence or causing injury to life, body or health. Strict liability based on the Product Liability Act shall remain unaffected. Liability for the culpable breach of essential contractual duties (= duties, the performance of which render the proper implementation of the contract possible in the first place and the observance of which the contractual partner may regularly rely upon) also remains unaffected; however, liability is limited to the foreseeable damage typical for the contract except in cases of sentence 1 and 2. The above provisions do not entail any change in the burden of proof to the detriment of the Customer.
- (2) The Customer is responsible for proper data back-up. Subject to liability according to paragraph (1), Osthus shall not be liable for the recovery of data if the Customer did not ensure within the scope of its respective obligations under this contract that these data can be reconstructed with reasonable efforts out of data material that is held available in machine-readable form.

§ 11 Right of use, copyright protection

- (1) Unless expressly otherwise agreed, Osthus shall grant the Customer a simple, non-exclusive, non-transferable right for an indefinite period of time to use the software including the documentation on the conditions defined in the contract for the intended purpose. The source code shall be provided only if this has been expressly agreed.
- (2) The Customer is entitled to produce a copy of the software for back-up purposes. Copies of the software serving to ensure a proper data back-up are part of the intended use. The Customer is not entitled to carry out any modifications or otherwise edit and transform the software or to reverse engineer, reverse compile or disassemble the software. Written material belonging to the software is protected by copyright. It may not be reproduced or circulated.
- (3) The software is protected by copyright. Insofar as Osthus itself does not hold the property rights to the software or parts thereof, Osthus has the rights that allow this software to be passed on to and used by third parties. The Customer undertakes to retain the proprietary notices, such as copyright notices and other legal reservations, contained in the software and the related written material without change and to adopt such notices without change into any and all copies of machine-readable or printed copies of the licensed material made in whole or in part by the Customer.
- (4) The Customer undertakes to ensure use of the licensed material (software + documentation) according to contract through reasonable technical and organisational measures.
- (5) The Customer undertakes not to make the software and related written material accessible to third parties either in the original or as complete or partial copies without the express written approval of Osthus and to store it in a place protected against unauthorised access by third parties. The employees of the Customer are not considered to be third parties.
- (6) Insofar as licensed or what is known as “open source” software of third-party suppliers is integrated into the services of Osthus, particularly during the creation of individual software for the Customer, any licences or terms of use of these third-party suppliers enclosed with the respective products which are applicable for these products also apply to the Customer. The Customer is responsible for the legitimate use of the software in conformity with the contract, particularly for the observance of any existing licences and terms of use.

§ 12 Third-party property rights

- (1) Osthus shall defend the Customer against all claims based on an infringement of an industrial property right or a copyright by the software as per contract and the related documentation. If Osthus is at fault, Osthus shall assume costs and damages imposed by a court on the Customer if the Customer immediately notifies Osthus of such claims in writing, has not recognised the infringement of the property right asserted and either leaves any dispute, including any out-of-court settlements, to Osthus or conducts these only in agreement with Osthus.
- (2) If the Customer discontinues use of the software in order to minimise the damage or for other important reasons, it shall be obliged to point out to the third party that its discontinuation of use does not involve any recognition of the alleged property right infringement.

- (3) If claims have been asserted against the Customer according to sentence 1 or such claims are expected, Osthus may modify or replace the licensed material at its expense to an extent which can be reasonably expected of the Customer. If this or obtaining a right of use is not possible with a reasonable effort, each contractual partner may instantly terminate the licence. In the event of termination the Customer is obliged, at the option of Osthus, to either delete the software including the documentation and all copies or to return them to Osthus. Osthus shall reimburse the licence fee paid by the Customer less an amount which takes account of the period of use of the software.
- (4) Further claims of the Customer based on an infringement of third-party property rights are excluded. This exclusion shall not apply in case of intent or gross negligence or in case of injury to life, body or health.
- (5) Insofar as the Customer is responsible for the property right infringement, claims against Osthus are excluded.

§ 13 Confidentiality, data protection, references

- (1) The contractual partners undertake to treat all the confidential information of the other contractual partner which is gained in the course of contractual negotiations and during performance of the contract as confidential for an indefinite period and to use it only for the purpose of contractual performance.
- (2) With regard to the confidential information of the other party each party shall take all reasonable steps to treat all such information as confidential and each party shall grant access to the confidential information of the other party only to such persons who require access for the performance of the contract. For the purposes of this Agreement, "reasonable steps" are defined as steps that the recipient takes to protect similar confidential information of its own and which at least reflect reasonable care; this includes the Customer ensuring the careful safekeeping and protection of the confidential information against misuse.
- (3) The obligation to treat information as confidential shall not apply to data which was already known to the other party, without any obligation to maintain confidentiality, or which is or becomes generally known without the respective party being responsible for this, or which is legitimately notified to the respective party by a third party, without any obligation to maintain confidentiality, or which was demonstrably independently developed by the respective party or which was approved in writing for publication by the other party.
- (4) The Customer shall ensure that Osthus is duly made aware of all relevant facts in addition to those required under the provisions of law, knowledge of which is necessary for Osthus for data protection and secrecy reasons. Before handing over a data medium to Osthus, the Customer shall ensure that contents meriting protection are deleted, unless otherwise agreed.
- (5) Osthus is entitled to include the Customer in its list of references.

§ 14 Provision of services, Place of performance

- (1) Osthus is - unless expressly otherwise agreed - entitled to perform the contracted services through affiliates.
- (2) The place of performance shall be the Osthus locations, unless otherwise specified in a contractual agreement.

- (3) Should employees of Osthus temporarily work at the Customer's firm for the provision of the services, these employees shall not be subject to the Customer's directions regarding the time, type and manner of performance. These employees shall solely be subject to the house rules of the Customer and its instructions on operational safety.

§ 15 Force majeure

- (1) Events of force majeure which significantly complicate the service or make it temporarily impossible shall entitle the respective party to postpone the provision of its service by the duration of the hindrance and a reasonable start-up time. Industrial disputes and similar circumstances are equivalent to force majeure insofar as these are unforeseeable, serious and are not caused through the fault of one of the parties. This also applies if the hindrances named above occur during delay or at a sub-supplier. The parties shall immediately notify each other of the occurrence of such circumstances.

§ 16 Applicable law, place of jurisdiction

- (1) The law of the Federal Republic of Germany applies exclusively to all claims based on the contract to the exclusion of the UN Sales Convention.
- (2) The place of jurisdiction for all disputes arising under the contract is the registered office of Osthus if the Customer is a merchant, a legal entity under public law or a special public fund. Osthus is also entitled to bring legal action against the Customer at its principal place of business.

§ 17 Miscellaneous

- (1) Amendments and supplements to these conditions or to the contract must be in writing and must thus be expressly designated as such. This also applies to a waiver of the written form requirement.
- (2) Rights based on the contractual relationship with Osthus may be assigned only after obtaining the prior written approval from Osthus.
- (3) Should individual conditions of these Terms and Conditions be void or invalid or not be implemented by mutual agreement between Osthus and the Customer, this shall not affect the validity of the remaining provisions. The same applies in the event of a gap in the provisions. In lieu of the invalid or unenforceable provision or to fill in the gap, the parties shall find a provision which most closely approximates the commercial aim of the provision to be replaced in a legally admissible manner.

§ 18 Special provisions for software maintenance and the provision of other IT services

- (1) Osthus shall provide the service / software maintenance in accordance with the state of the art upon conclusion of contract and through personnel qualified to provide the agreed services.

- (2) For software maintenance, unless expressly otherwise agreed, the obligation to deliver program corrections also includes the obligation to grant rights of use in a manner in which and to an extent to which such rights exist for the software to be maintained.
- (3) For other IT-services Osthus grants the Customer, unless expressly otherwise agreed, a non-exclusive and non-transferable right limited to the term of the contract to use the embodied service results provided under the contract, unless this is the purpose and use of the treaty. These rights include the agreed interim results, training documents and aids.
- (4) If the service / maintenance is provided contrary to contract or with faults and Osthus is at fault for this, Osthus shall be obliged to provide the service / maintenance according to contract within a reasonable period at no extra charge for the Customer. This requires notification of the defect by the Customer, which must be given immediately, at the latest within 2 weeks after gaining knowledge thereof. If providing the service / maintenance according to contract does not succeed to a substantial part within a reasonable grace period to be expressly set by the Customer for reasons for which Osthus is responsible, the Customer shall be entitled to instantly terminate the contract. In this case Osthus shall be entitled to remuneration for the services provided until the notice of termination becomes effective. No remuneration shall be due only for those services for which the Customer furnishes proof within 4 weeks of giving notice of termination that they cannot be used by it and are not of any interest to it.
- (5) The right of termination for any other good cause remains unaffected. In this case Osthus shall be entitled to remuneration for the services provided until the notice of termination becomes effective. No remuneration shall be due only for those services for which the Customer furnishes proof within 4 weeks of giving notice of termination that they are not of any interest to it.
- (6) § 10 applies in respect of the liability of Osthus.
- (7) If a third party files claims against the Customer based on an infringement of property rights due to the maintenance provided by Osthus or due to the use of the service results provided and if its use is impaired or prohibited as a result thereof, Osthus shall be liable in accordance with the provisions set out in § 11, provided that it is at fault. At its option and at its expense, Osthus shall either provide the maintenance or modify the service results in such a manner that they do not infringe the property right but are largely conformant with the agreed function or service features in a manner which can be reasonably expected of the Customer or Osthus shall indemnify the Customer from the licence fees vis-à-vis the proprietor of the industrial rights or third party. If Osthus does not succeed in doing this on reasonable conditions, Osthus shall inform the Customer of this fact and prohibit the Customer from any further use as of a specific time. At the option of Osthus, the Customer shall be obliged to delete the service results / maintenance results or, as far as possible, return them to Osthus. Osthus shall be entitled to receive remuneration for the period in which the services were used by the Customer.