

General Terms and Conditions

tisco Softwareentwicklungs- und Beratungs GmbH
Version 2008



1 Scope and Validity of Contract

All orders and agreements shall only be legally binding if they have been signed by the Contractor in writing and on behalf of the company and shall only be binding in the scope given in the order confirmation. Any purchase conditions of the Customer shall hereby be excluded for the legal transaction in question and the entire business relationship. Offers are, in principle, subject to confirmation.

2 Service and Verification

2.1 Parts of a contract might be

- Devising of organizational concepts
- Global and detailed analyses
- Creation of individual programs
- Supply of (standard) library programs
- Acquisition of use entitlements for software products
- Acquisition of licenses to use works
- Co-operation in putting software into operation (changeover support)
- Telephone consultancy
- Program maintenance
- Creation of program carriers
- Other services

2.2 The planning of individual organizational concepts and programs shall be carried out in accordance with the type and scope of the binding information, documentation and aids made available by the Customer in their entirety. These also include real-world text data as well as sufficient testing opportunities, which the Customer shall make available in good time, during normal working hours and at his own expense. Should the equipment already made available by the Customer for the test be operated routinely, the responsibility for securing the routine data shall lie with the Customer.

2.3 The basis for the creation of individual programs shall be the written specification of services which the Contractor makes available to the Customer on the basis of the documentation and information provided to him, or which the Customer makes available. This specification of services is to be checked by the Customer for correctness and completeness and his consent noted on it. Any subsequent changes can be made upon agreeing on a separate deadline and price.

2.4 Any software or program adaptations created individually require a respective program acceptance by the Customer no later than four weeks after delivery. This shall be confirmed by the Customer in a protocol (checking for correctness and completeness on the basis of the specification of services accepted by the Contractor by means of the test data made available specified under section 2.2). Should the Customer allow the period of four weeks to elapse without carrying out a program acceptance, the program shall be deemed to have been accepted after expiry of this period of time. Should the software be used by the Customer in routine operations, the software shall also be deemed to have been accepted.

Any occurring defects, i.e. deviations from the specification of services agreed in writing, are to be notified to the Contractor by the Customer and sufficiently documented; the Contractor shall then make every effort to remove the defect as quickly as possible. In case of any significant defects impeding the commencement or continuation of routine operations, which have been notified in writing, a renewed acceptance is necessary following removal of the defect.

2.5 In case of (standard) library program orders, the Customer acknowledges the scope of the performances of the products ordered.

2.6 Should the Contractor establish in the course of his activities that there is either an absolute or legal impossibility to complete the contract, he must notify the Customer immediately. If the Contractor does not modify the performance description accordingly or does not ensure the respective preconditions to allow for further completion, the Contractor is entitled to refuse completion. If the impossibility of completion is due to the default of the Customer or to subsequent alterations to the performance description by the Customer, the Contractor is entitled to cancel the contract. The costs and expenses as well as any demounting costs incurred by the Contractor for his activities up to this point in time must be settled by the Customer.

2.7 Dispatch of program carriers, documentations and performance descriptions is to proceed at the Customer's own cost and risk. Additional training or explanations commissioned by the Customer are charged separately. An insurance shall only be taken out at the Customer's request.

3 Prices, Taxes and Charges

3.1 All prices are in Euro without VAT. They only apply to the contract in hand. The prices are ex Contractor's premises. Any costs for program carriers (e.g. magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes etc.) as well as incurring contract fees shall be charged separately.

3.2 The prices for standard library products are those applicable on the day of delivery. The charges for all other services (management consulting, programming, training, changeover support, telephone consulting) shall be calculated according to the fees applicable on the day the performance is completed. Additional working hours, which have not been included in the contract price, at no fault of the Contractor, shall be charged according to actual expense.

3.3 Travel expenses and daily and nightly expense allowances shall be charged separately according to the rates applicable. Travel times are deemed to be working hours.

4 Date of Delivery

4.1 The Contractor shall do his utmost to meet the completion deadline.

4.2 The completion deadline can only be met if the Customer completes all the work, provides all the documentation necessary to this end (especially the performance description specified in article 2.3) and fulfils his duty to co-operate. Delays in delivery and

increases in costs which have been caused by incorrect or incomplete information or subsequent alterations to documentation provided by the Customer are not the Contractor's responsibility and shall not be deemed to be default of delivery. The additional costs caused must be settled by the Customer.

4.3 As regards orders which comprise several units or programs, the Contractor is entitled to complete part deliveries and make out partial invoices.

5 Payment

5.1 The invoices including VAT made out by the Contractor are to be settled within two weeks from the date of invoice receipt without any deductions and free of expense. The terms of payment agreed upon for the entire contract shall also apply to partial invoices.

5.2 As regards orders which comprise several units (e.g. programs and/or training, partial execution), the Contractor is entitled to make out an invoice after the delivery of each individual unit or performance.

5.3 Adherence to the terms of payment agreed upon is a fundamental prerequisite for the execution of delivery and completion of contract by the Contractor. Non-adherence to the terms of payment entitles the Contractor to discontinue work and cancel the contract. All costs incurred and loss of profit shall be borne by the Customer. In the event of default in payment, interest shall be charged according to customary bank rates. If the Customer fails to settle two part payments, the Contractor is entitled to claim default in payment and accelerate the maturity of any outstanding payments as well as accepted bills of exchange.

5.4 The Customer is not entitled to withhold payments on the grounds of the incompleteness of total delivery, claims under a warranty or on the grounds of defects.

6 Copyright and Use

6.1 All copyrights for the performances agreed upon (programs, documentation, etc.) are held by the Contractor and his licensors. Once the Customer has paid the charge agreed upon for the software, he is entitled to use it for his own purposes and within the framework of the number of licenses he has purchased only. The contract in hand only entitles the Customer to the use of the software. Distribution through the Customer is not permitted in compliance with the copyright law. The Customer's participation in the production of the software does not give him any additional rights of usage as stipulated by this contract. Any infringement of the Contractor's copyright shall lead to claims for damages in which case the Customer shall indemnify the Contractor in full.

6.2 The Customer is allowed to make copies for keeping on file and for securing data on the condition that this is not expressly forbidden by the licensor or a third party in the software, and that all comments on copyrights and ownership are also maintained in the copies.

6.3 Should the publication of interfaces be necessary for the establishing of interoperability of the software in question, this is to be requested by the Customer from the Supplier in return for reimbursement of costs. Should the Supplier not meet this requirement and should

a decompilation occur in accordance with Copyright Law, the results are exclusively to be used to establish interoperability. Any abuse shall result in compensation for damages.

7 Right of Withdrawal

7.1 In the event of default of delivery due to the sole fault or wrong of the Contractor, the Customer is entitled to rescind the contract by means of a registered letter if the essential contents of the performance agreed upon have not been completed within a reasonable period of grace and the Customer himself is not responsible for this default.

7.2. Force majeure, labor disputes, natural disasters, transport stoppages and other circumstances which lie beyond the Contractor's control release the Contractor from his delivery obligations and/or allow the Contractor to set a new delivery deadline.

7.3 Cancellation by the Customer is only possible with the written consent of the Contractor. If the Contractor agrees to cancellation, he is entitled to a cancellation charge of 30% of the contract value of the entire project which has not yet been invoiced in addition to the charge for performances and costs which have been incurred up to this point in time.

8 Warranty, Maintenance, Modifications

8.1 The warranty period is four months. The notice of defects is only valid if it applies to reproducible defects and if these defects are documented in writing within four weeks after receipt of performances or program acceptance in case of individual software specified in chapter 2.4. In case of warranty, improvement is to be preferred to price reduction or modification. If complaints are justified, the defects shall be remedied within a reasonable period. The Customer must, however, ensure that the Contractor is able to take all the measures needed to investigate the matter and rectify the defect. Reversal of burden of proof, i.e. the Contractor's obligation to prove his innocence in regard to the stated defects, is excluded.

8.2 Any corrections and additions which prove to be necessary due to organizational and technical programming defects up to the time of delivery of the agreed service, which are the responsibility of the Contractor, shall be carried out by the Contractor free of charge.

8.3 Costs for support, fault diagnosis and removal of faults and flaws which are the responsibility of the Customer, as well as any corrections, alterations and additions shall be carried out by the Contractor and charged for. This shall also apply to the removal of defects if any program alterations, additions or any interference have been carried out by the Customer or third parties.

8.4 Furthermore, the Contractor shall assume no liability for faults, malfunctions and damages caused by misuse, modified operating system components, interfaces and parameters, the use of unsuitable organizational means and data media, if these are stipulated, abnormal operating conditions (particularly deviations from installation and storage conditions) and damage through transportation.

8.5 The Contractor shall not furnish a warranty for programs which have been modified at a later date by the Customer's own programmers or by a third party.

8.6 If the subject matter of this contract is to modify or upgrade an already existing program, then the warranty covers modifying and upgrading. The warranty on the original program is not, however, renewed.

9 Liability

The Contractor shall be liable for damages within the scope of the statutory regulations to the extent that intent or gross negligence on his part can be substantiated. Liability for slight negligence shall be excluded.

10 Loyalty

The parties to the contract undertake mutual loyalty. They shall cease and desist from any enticement and employment of employees who have worked on carrying out the orders, also by third parties, by the other party to the contract during the period of the contract and for 12 months following termination of the contract. The party to the contract infringing the above shall be obliged to pay flat-rate compensation for damages in the amount of EUR 35,000.

11 Data Protection, Confidentiality

The Contractor shall oblige his employees to adhere to the provisions of §15 of the Data Protection Act.

12 Miscellaneous

Should any individual provisions of this agreement be or become ineffective, the remainder of the content of this agreement shall not be affected thereby. The parties to the agreement shall co-operate as partners in order to find a solution which comes as close as possible in meaning to the meaning intended by the ineffective provision.

13 Final Provisions

If not otherwise stipulated, the legal provisions which fully qualified merchants are subject to according to Austrian law shall be applied even if the contract is concluded abroad. Any disputes shall be settled by the court having jurisdiction as to the subject matter at the Contractor's principal place of business. For sale to consumers within the meaning of the Consumer Protection Act, the foregoing provisions shall only apply to the extent that the Consumer Protection Act does not compellingly provide for any other regulations.