

# itemis AG - General Terms and Conditions for Consulting and Services

itemis AG

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## **§ 1 Scope, Form**

- a. These General Terms and Conditions of itemis AG regarding services and consulting services (“GTC”) apply to all offers and orders / contracts of itemis AG, Am Brambusch 15-24, 44536 Lünen (hereinafter referred to as “itemis”) regarding the provision of consulting and services for software, such as installation, implementation, customization or other adjustments of software. These GTC explicitly do not apply to the maintenance of standard software.
- b. These GTC apply exclusively to entrepreneurs, legal entities under public law, or special funds under public law within the meaning of section 310 paragraph 1 of the German Civil Code (hereinafter referred to as “customers”).
- c. These GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as itemis AG has expressly agreed to their validity in writing. This requirement of consent applies in any case, for example, even if itemis AG provides services while being aware of the customer’s general terms and conditions.
- d. In individual cases, specific agreements with the customer (including side arrangements, additions and amendments) shall always take precedence over these GTC. The content of such agreements shall be determined by a written contract or the written confirmation by itemis AG, subject to contrary evidence.
- e. References to the applicability of legal provisions are for clarification purposes only. Even without such clarification, the legal provisions shall apply to the extent that they are not directly modified or expressly excluded in these GTC.

## **§ 2 Provision of Services**

- a. The services to be provided to the customer by itemis AG are determined by the respective contract. itemis AG shall provide consulting services independently and with due care in accordance with the state of the art.
- b. In connection with the services provided, itemis AG shall not bear any responsibility for a specific outcome unless expressly agreed otherwise in the contract. The customer bears the risk that the services ordered meet their requirements.
- c. itemis AG is free to choose the employees who are assigned to provide the services to the customer unless expressly stated otherwise in the contract. The employees assigned to provide the services may be replaced at any time. The customer is not entitled to give disciplinary or employment-related instructions to the employees deployed by itemis AG.
- d. itemis AG is generally free to choose the place of the performance and to determine the working hours. If the nature of the work requires presence at a specific location, this shall be agreed upon in writing. Dates and schedules mentioned in the contract are - unless expressly designated as binding - provided for preparation and planning purposes only and are not binding deadlines.
- e. itemis AG is authorized to employ reliable agents with the necessary professional qualifications to perform the services.
- f. itemis AG is generally not authorized to act on behalf of the customer towards third parties, in particular to conduct negotiations or make declarations of intent with legal effect for or against the customer. Exceptions require the prior written consent of the customer.

### **§ 3 Conclusion of the Contract**

- a. The conclusion of a contract between itemis AG and the customer requires a written agreement that is signed by both parties or the written acceptance of a binding offer made by itemis AG. An effective acceptance of an offer from itemis AG by the customer, and therefore the conclusion of a contract can only be made by returning the signed, unaltered copy of the offer from itemis AG. Any modifying acceptance of an offer from itemis AG shall be treated as a new offer from the customer. In this case, a contract based on the modified conditions shall only come into effect if itemis AG expressly accepts the modified offer from the customer by means of a written statement to the customer.
- b. The formal requirement stated in section 3a is also fulfilled if the contract is electronically signed and transmitted, including scans of signed documents or digital signatures.
- c. Unless otherwise specified in an offer, all offers from itemis AG are non-binding.

### **§ 4 Payment Terms, Cost Estimation**

- a. The amount to be paid by the customer is determined by the contract. It includes the amount for all services listed in the contract. itemis AG provides the services at the agreed-upon amount specified in the contract. Unless otherwise agreed in the contract, the amount is based on time and material expenses at the rate specified in the contract.
- b. If a daily rate per man day is agreed upon, it covers a working time of eight (8) hours. Any additional or lesser working hours will be calculated proportionally.
- c. Travel time, travel expenses, accommodation costs, other material and additional expenses as well as expenses incurred in connection with the provision of the services, will be invoiced according to the agreements contained in the contract and according to expenditure.
- d. Unless otherwise stated, all price indications from itemis AG are subject to the applicable value-added tax. No discount is granted.
- e. Unless expressly agreed otherwise, the time and cost estimates (such as performance days or hours) provided in the contract for the provision of the agreed services are only an estimation of the effort involved, and the actual effort may deviate from these estimates. If itemis AG determines during the course of the services that the estimated efforts are likely to be exceeded, itemis AG will inform the customer about it. The customer will promptly decide on further actions and inform itemis AG in writing accordingly.
- f. itemis AG will invoice the services provided on a monthly basis or upon completion of the work. Invoices are due for payment within 14 days after receipt of the invoice. Statutory provisions apply to the occurrence of payment default and its consequences.
- g. Offsetting or withholding by the customer is only permitted with undisputed or legally established claims.

### **§ 5 Contract duration and termination**

- a. The contract is concluded in accordance with section 3a of these GTC and remains in effect until the services are provided.
- b. The right to terminate the contract for cause remains unaffected. itemis AG may terminate the contract for cause, in particular if the customer falls into arrears with payment and fails to pay

or pays irregularly despite being reminded, if the customer fails to fulfill other material contractual obligations despite warnings within a reasonable period, or if the customer violates its cooperation obligations according to section 8 of the GTC.

- c. If the customer terminates the contract prematurely for important reasons, the customer shall compensate itemis AG for the services provided up to that point.
- d. The termination must be in writing. Text form is not sufficient.
- e. After the termination of the contract, itemis AG shall promptly and without request return or delete any work and business documents, as well as other work materials provided to them. The customer's electronic data shall be completely deleted. This excludes documents and data for which longer legal retention obligations apply, but only until the end of the respective retention period.

## **§ 6 Granting of Rights**

- a. "Work product" refers to all accompanying results of the service and other created works arising from the activities of itemis AG within the scope of the contract, including documents, project sketches, presentations, software code and drafts.
- b. All work results remain the property of itemis AG, and all the rights to the work results including any intellectual property rights and other rights belong exclusively to itemis AG.
- c. Upon full payment of the agreed upon amount, the customer shall receive a non-exclusive, non-transferable, temporally unlimited right to use the work product for internal purposes and within the purpose described in the contract and in connection with and within the scope of the usage rights acquired by the customer for the software. The granting of the usage rights does not include the transfer or use by the customer's affiliated companies.
- d. The customer may reproduce the work products to the extent necessary for their intended use. The reverse translation of provided program code into other code forms (decompilation) and other forms of reconstruction of the various stages of software development (reverse engineering) are only permitted if they are essential for achieving interoperability with other independently created computer programs and the necessary program code information has not been published or is otherwise readily available to the customer, for example, by being requested from itemis AG. Decompilation is only permitted within the limits of section 69e of the Copyright Act (UrhG).
- e. Any further uses, especially the sharing of work products with third parties is prohibited.

## **§ 7 Liability**

- a. itemis AG shall be liable without limitation in the following cases:
  - in case of intent or gross negligence,
  - for the violation of life, body or health,
  - under the provisions of the Product Liability Act, as well as
  - to the extent of a guarantee assumed by itemis AG.
- b. In the case of slight negligence in the breach of a duty that is essential for the achievement of the purpose of the contract (cardinal obligation), the liability of itemis AG is limited in terms of amount to the that is foreseeable and typical for the nature of the respective business, but not

exceeding the value of the order or contract.

- c. The liability for any potential loss or damage of data is limited to the expenses that would be required with proper data backup to restore the data from the secure data material.
- d. There is no further liability of itemis AG beyond the mentioned provisions.
- e. The aforementioned limitations of liability also apply to the personal liability of employees, representatives, vicarious agents and bodies of itemis AG.

## **§ 8 Obligations of the customer**

- a. The customer is required to support the consulting services of itemis AG through appropriate cooperation. In particular, the customer will provide the necessary information and data to itemis AG and grant access to its premises during business hours to the employees of itemis AG to the extent necessary.
- b. The customer will also provide the necessary work materials, including workstations and computers, access to the system environment and if applicable the development environment in its premises to a reasonable extent. The possibility of remote access is generally to be granted by the customer upon agreement. itemis AG is entitled to provide all services online or remotely if necessary under the circumstances. This particularly applies in case of restrictive measures due to Covid-19.
- c. The customer shall appoint a contact person and a deputy as dedicated persons of contact for all matters related to the consulting project. They should be enabled to take or facilitate timely decisions concerning the project. Additionally, the customer shall provide the employees with specific knowledge required for the implementation of the project.
- d. If the services of itemis AG require consent and authorization of third parties, the customer shall obtain the necessary approvals and authorizations in a timely manner before commencement of the respective activities.
- e. If the customer fails to fulfill its obligations to cooperate and as a result itemis AG is unable to complete its consulting services in whole or in part within the agreed-upon time, the agreed-upon time period will be extended accordingly.
- f. The customer's support services are provided free of charge.

## **§ 9 Confidentiality**

- a. "Confidential information" refers to all information and documents of the respective other party, whether marked as confidential or reasonably deemed confidential based on the circumstances. This includes in particular trade secrets, information about operational procedures, business relationships, know-how, as well as for itemis AG work results and software belonging to itemis AG.
- b. The parties agree to maintain secrecy regarding confidential information. This obligation remains in effect even after termination of the contract.
- c. This obligation does not apply to confidential information that (i) was already known to the recipient at the time of contract conclusion or subsequently became known to the recipient from a third party without violating any confidentiality agreement, legal provisions or regulatory orders; (ii) is publicly known at the time of contract conclusion or becomes publicly known thereafter unless such disclosure results from a breach of this contract; (iii) must be

disclosed due to legal obligations or upon the order of a court or authority. To the extent permitted and feasible, the recipient obligated to disclose such information will notify the other party in advance and provide an opportunity to take action against the disclosure.

- d. The parties will only grant access to confidential information to those consultants who are bound by professional secrecy or who have previously been imposed with confidentiality obligations equivalent to those of this contract.
- e. The parties will only disclose confidential information to those employees who need to know such information for the purpose of performing this contract.

#### **§ 10 Data protection / information security**

- a. The contracting parties shall process and use personal data of the respective other contracting party in compliance with the provisions of data protection laws and for the purposes specified in the contract. They shall secure this data against unauthorized access and shall only disclose them to third parties with the consent of the other contracting party or the individuals concerned.
- b. If it is necessary for the performance of the contract that the customer grants access to personal data, itemis AG will take appropriate organizational and technical measures in line with the state of the art to ensure the availability, integrity, authenticity and confidentiality of the information systems, components and processes of this data used in the provision of the services. Personnel involved will be informed about data protection obligations and obliged to comply with the relevant data protection regulations. If itemis AG processes data on behalf of the customer, the parties will conclude a data processing agreement in accordance with the applicable data protection laws prior to processing.

#### **Final Clauses**

- a. Legal declarations and notices by itemis AG regarding the contract (e.g., setting deadlines, reminders, withdrawal) shall be made in writing or in text form within the meaning of section 126b of the German Civil Code (e.g. e-mail or fax). Statutory formal requirements and additional evidence, particularly in cases of doubt regarding the legitimacy of the declarant, remain unaffected.
- b. Except for the obligation to pay the agreed upon fee, each party is released from its obligation to perform if and as long as the performance of the delivery is impossible due to labor strikes, fire, flood, governmental orders, Covid-19 related restrictions, terrorism or any other cause of force beyond the control of the respective party, and this has not been caused by the fault of the party concerned.
- c. The services provided under the contract, including any software concerned, are subject to import and export laws of various countries. The customer agrees to not export the services or work product to countries or natural or legal persons for whom export restrictions apply according to the relevant export laws. Furthermore, the customer is responsible for complying with all applicable legal regulations of the country of its headquarters and the countries of its branches regarding its use of the work results and services. The GTC and the contractual relationship between itemis AG and the customer are governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

- d. The exclusive place of jurisdiction for all disputes arising or indirectly arising from the contractual relationship is the registered office of itemis AG. However, itemis AG is also entitled to file a lawsuit at the place of performance of the delivery obligation according to these GTC or to an individual agreement, or at the general place of jurisdiction of the customer. Mandatory legal provisions especially regarding exclusive jurisdictions remain unaffected.
- e. The contract comprehensively regulates the respective subject matter of the contract. There are no side agreements. Any oral or written agreements made earlier regarding the subject matter of the contract are no longer valid upon conclusion of the contract.
- f. If individual provisions of these GTC are or become ineffective or void, the validity of the remaining provisions shall not be affected.