

# General Terms and Conditions of dasistweb® GmbH

Version: 18 June 2018

## 1. Scope

1.1. dasistweb® GmbH, Bergfeldstraße 11, 83607 (user of these General Terms and Conditions and hereinafter referred to as "Agency") shall provide all services, work performances and deliveries (hereinafter referred to as "contractual services") on the basis of these General Terms and Conditions, which may apply in addition to separately concluded contracts (e.g. project and service contracts). In the event of conflict, the provisions of separately concluded contracts take precedence over the terms and conditions. The GTC are freely available on the Internet at <https://www.dasistweb.de/AGB.pdf> at any time.

1.2. The Customer accepts the Agency's GTC when placing an order. The Agency objects to the inclusion of contractual conditions from the customer. The Customer's contractual conditions shall only apply if the agency and the customer have expressly agreed this in writing. The provision of services by the Agency with knowledge of the contractual conditions of the customer does not make them valid, nor does it constitute as recognition.

1.3. The Agency is entitled to amend or supplement these General Terms and Conditions. Customers with existing contracts shall be notified of any changes to these GTC in text form (e.g. by email) at least six weeks prior to their coming into effect and the changes shall be deemed approved if the customer does not object to the changes prior to their coming into effect and if the customer was also informed about consequences of failing to object in the course of the notification.

## 2. Cost estimate and offer

2.1. Offers are subject to confirmation, are non-binding and only become valid after the Customer has placed an order in writing. Offers are valid for 30 days from date of offer, unless otherwise stated in the offer. If the offer indicates expected expenses for services, it represents an estimate of expenses (not a binding fixed price offer).

## 3. The Customer's obligation to cooperate

3.1. The Customer shall provide the Agency with all data, documents, technical specifications as well as acceptance and test environment(s) required for the performance of the services in the form defined by the Agency and shall answer any queries from the Agency without undue delay. Upon request, the Customer shall grant the Agency's employees timely access to all information and systems required and necessary for their work, insofar as these are within the Customer's sphere of influence. If services are rendered by the Agency to the Customer, the Customer shall provide the corresponding employees of the Agency with appropriately equipped workstations for this period, as well as required software tools, network and Internet connections and other hardware and software. In addition, the Customer is obliged to provide the necessary interfaces for the agreed target dates.

3.2. The Customer undertakes to provide all participation services necessary to fulfil the purpose of the contract free of charge and without undue delay.

3.3. If additional expenditure or a delay in the scheduling is due to the Customer's untimely cooperation or cooperation that does not meet the requirements, the costs incurred for this shall be borne solely by the Customer. This also applies to any costs for material and personnel resources that cannot be used due to lack of preparatory work. Any resulting delays in scheduling must be added to the agreed target dates.

## 4. Agency Services

4.1. Even after completion or in addition to individual projects, the Agency offers to change, extend, add to or update the project software on the basis of a separate order, subject to a prior feasibility check, against a separate order to be specifically agreed in each case or, in the absence of a specific agreement, on the basis of the actual expenditure of time in accordance with the remuneration rates applicable at the time of the order in accordance with the price list of the Agency.

4.2. The Agency reserves the right to reject individual enquiries from the Customer.

4.3. Insofar as a service contract has been concluded between the parties, the provisions provided for the payment of services and reaction times apply as a priority.

4.4. In the case of more extensive project orders, the parties first determine, at the discretion of the Agency, the requirements the Customer has for the project. It is a primary obligation for the Customer to participate in the agreed meetings. It is not the responsibility of the Agency to ensure that the specified requirements are suitable for a particular purpose intended by the Customer.

4.5. In the case of a procedure pursuant to Subclause 4.4, the Agency will then draw up a performance specification on the basis of the above specifications, which describes the later implementation of the specified adjustments with a time schedule. The specifications shall be signed by both parties. When this is signed by the Customer, the respective content is accepted as being in accordance with the contract.

4.6. If, in the course of a concept phase, individual requirements result in additional expenditure from the Agency's point of view compared with the originally estimated expenditure, the Agency shall report such additional expenditure and the resulting additional costs to the Customer.

4.7. After approval by the Customer, which may be given for already agreed requirements before completion of the specification, the Agency provides the agreed adjustments as defined in the concept phase or in the specification.

4.8. Upon request, the Customer shall name a contact person to the Agency, who shall ensure that the Customer fulfils their obligations to cooperate in accordance with Section 3 of the Terms and Conditions during the entire duration of the project. The contact person shall be empowered to make declarations which are necessary as an interim decision in the context of the continuation of the contract.

4.9. Until acceptance, the Customer may demand a modification in the agreed requirements for the project. The Customer's requests for modifications or additions to the scope of services to be provided by the agency as specified in the specifications or before completion of the conception phase must be made in text form (§ 126b BGB). If it is foreseeable that the time of completion will be postponed or the costs, in particular the claim for remuneration, will increase due to the requests for modifications or additions, the Agency shall inform the Client accordingly. The Customer then has the choice of declaring their fundamental consent to the postponement of the performance times and increase in remuneration or to the withdrawal of the request for modification. Orders for supplementary and / or reprogramming to or from standard software always refer to the version status considered to be relevant within the scope of the specifications or during the concept phase. The cost and time incurred by the request for modification, in particular for the examination of the requested modification, the preparation of a modification proposal and any downtimes, shall be borne by the Customer, even if no agreement is reached.

4.10. The delivery of the performance results shall take place in accordance with the deadlines specified in the specifications. Delays resulting from participation services which are not provided in due time, not provided in due form or delayed shall be added to the agreed time deadline accordingly. In the event of persistent or repeated delays in the cooperation of the Customer, the Agency shall have the right to suspend the schedule of deadlines by notifying the Customer in advance if the calculation of a specific performance deadline is unreasonable due to such persistent delays. Should the Customer fail to comply with his obligations to cooperate despite two deadlines being set by the Agency, they shall then be obliged to compensate the Agency for any damage incurred by the Agency as a result of the delay (e.g. due to the provision of personnel). In this case, the Agency shall also be entitled to terminate the respective contract with the Customer, whereby the Customer shall remain obliged to pay for all services already rendered to the Customer according to the time expenditure. Any such termination will not affect the service agreement.

4.11. The Agency decides at its own discretion to provide agency services in another way, in particular without a prior concept phase, e.g. on the basis of an agile approach.

4.12. All documentation, such as contracts or specifications, shall be in the German language, unless otherwise ordered by the customer.

## 5. Acceptance of owed work services

5.1. After completion of the installation of the system, further developed components or acceptable partial services, the customer shall carry out an approval of the agency services after notification from Agency of the completion and provision of the service which requires approval. The approval of the services requires a functional test. The functional test is considered to have been successfully carried out if the adjustment meets the agreed requirements.

5.2. Approval must take place immediately, unless the type, scope and duration of the functional test has been specified separately by the project managers or within the scope of the specifications. Within 10 working days of receipt of the notification of completion, the Customer must either declare approval or report the presence of defects, in text form, which prevent approval. If the Customer does not declare approval in due time, the Agency may set a reasonable deadline for the submission of the declaration. The adjustments shall be deemed accepted upon expiry of the deadline if the Customer neither declares approval in text form nor explains to the Agency in text form which defects still need to be remedied.

5.3. The Customer shall inform the Agency of any deviations from the requirements specified in the specifications which become known to him during the acceptance test and if possible prior to completion of the acceptance test. Determined defects of the performance or partial performance to be accepted are to be distinguished according to the following error classes:

Class 1: The defect means that the system as a whole or the part of the system which is to be removed cannot be used.

Class 2: The defect causes considerable restrictions on the use of important functions.

Class 3: Other defects.

The allocation to the individual defect classes shall be made by mutual agreement, taking due account of (i) the impact the relevant deficiency has on business operations and (ii) the interests of the Agency.

5.4. The Customer shall be entitled to refuse approval only on the grounds of class 1 and 2 defects. Class 3 defects do not prevent the acceptability of the service, but are to be treated within the scope of the warranty. They shall be recorded as defects in the Customer's written declaration of approval.

5.5. With regard to the final approval, the productive start-up of the system replaces the customer's declaration of approval ("assumed approval") after 4 weeks, if the final approval is not expressly refused with reference to class 1 or 2 defects during this period.

5.6. In the event that approval is refused, the Agency will rectify the defects preventing the approval within a reasonable period of time and immediately re-submit the service. The approval procedure described above is carried out until the service is approved by the Customer.

5.7. The Customer shall draw up a written approval report for the approval, sign it and send it to the agency, have it countersigned by the Agency and if necessary have it supplemented. The report shall describe the defects found, classify them, in a form which allows the defect to be reproduced and state the reasons for any refusal to grant approval.

## 6. Warranty for agency services

6.1. In the event of defects (material defects and defects of title), the statutory provisions shall apply unless the following provisions provide otherwise.

6.2. If defects occur in the programmes and other services provided by the Agency the Customer will immediately report these within five working days, stating the information required for the detection of defect in text form, so that the defect can be reproduced for the Agency and a user error can be ruled out. As far as it is reasonable for the Customer, the Agency shall be entitled to provide the Customer with a new version of the software (e.g. "Update", "Upgrade", "Maintenance Release/Patch", "Master Release") for the purpose of eliminating the defect, which no longer contains the notified defect or eliminates it, or to develop an alternative solution which circumvents the identified defect, insofar as the elimination of the defect is actually impossible or disproportionate for economic reasons.

6.3. If the rectification of defects or new delivery carried out results in a change to the delivered documents or any other documents, these must also be amended accordingly.

6.4. The warranty claims shall be subject to a limitation period of 12 months after approval. If a defect is deliberately, fraudulently concealed or as a result of gross negligence by the Agency, the statutory periods of limitation shall apply.

6.5. The Customer shall not be entitled to any warranty claims if they or a third party has made changes to the contractual software or if the software is not used in the agreed system environment, unless the changes were not the cause of the reported defect. This explicitly includes the independent installation of extensions and any kind of updates (for extensions as well as basic software). Warranty claims do not extend to provided system components (hardware or software) and such system components which the Customer or a third party changes without consent or updates and to errors caused by an independent change of the system environment.

6.6. The Customer is responsible for ensuring that the materials they have contributed are free of third-party rights and do not infringe any third-party rights. The Customer shall indemnify the Agency from claims of third parties insofar as such claims are asserted against the Agency on the basis of rights to or infringements of rights by such materials. In the event of a claim against the Agency due to the infringement of such third-party rights, the Customer undertakes to indemnify the Agency to the full extent from the claims of third parties and to reimburse the Agency for all costs of an appropriate legal defence. The Customer is also obliged to defend against the unfounded claims of third parties with regard to the aforementioned rights. In the event of doubts as to the legal admissibility of the commissioned service, the Customer must obtain legal advice at their own expense.

## 7. Rights to agency services

7.1. All rights to the software developed and created by the Agency within the scope of the contractual services, including updates and other services (e.g. sketches, drafts, logos, concepts, templates, design originals, programming, algorithms, code and similar service results), in particular copyrights, property rights and rights of use, shall remain with the Agency unless they are expressly granted to the Customer. The Customer shall be granted the rights of use to the performance results to the extent necessary for the purpose specified in the order/contract. This regularly includes the use of the software and other content developed and created by the Agency to the extent necessary for the purpose of the software at the time the contract was concluded. Unless expressly agreed otherwise, the customer shall not be granted the right to adapt the performance results and to use the performance results elsewhere, in particular, independently of the software's intended purpose of use, in particular by duplication, further distribution, leasing, public reproduction and further licensing.

7.2. It is only permissible for the Customer or third parties commissioned by the Customer to perform a modification to the software developed and created by the Agency if this serves to eliminate a defect and the deadline for the Agency to rectify this defect has passed or if the Agency has refused to eliminate the defect. The Customer may only have defects remedied by third parties if there is no risk of disclosure of the Agency's know-how (e.g. programming, algorithms, code).

7.3. The Customer acknowledges that the software codes produced by the Agency together with the user documentation ("reserved property") are protected by copyright and that they constitute a trade secret of the Agency. The Customer must immediately inform the agency in writing of any access by third parties to the reserved property and inform such third parties of the rights of the Agency.

7.4. Insofar as software products created by third parties or offered as standard software, e.g. programme libraries, parts of software tools, extensions and others, are integrated into the adaptation services, the customer shall receive the rights to these software products granted in the terms of use of the software products used. Section 7.6 applies to software products that are subject to an open source software license.

7.5. The customer is not authorised to remove or change names, trademarks, serial numbers or other identification marks or proprietary notices in the software. He must include and reproduce such marks and indications in all copies

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of the software in the same form as in the original. If the originals bear a note referring to copyright protection, this note shall also be affixed to the copies.

7.6. Insofar as software products that are subject to an Open Source Software License (OSS License), in particular the GNU Public License (GPL) of any version or other so-called Copy Left Licenses are integrated into the adaptation services, the relevant OSS licenses shall apply for these software products as a matter of priority.

7.7. The Customer retains the rights to materials that are brought in by the Customer within the framework of the project and/or handed over to the agency. The Agency shall be permitted to use such materials insofar as this is necessary to provide the services owed under the contract. The Customer is responsible for ensuring that they have the necessary rights to the materials and that the contractual use of the materials does not infringe any rights of third parties.

7.8. Unless expressly agreed otherwise, the Agency shall be entitled to use the Customer's name as a reference customer and the customer-related project for demonstration purposes and for advertising purposes as well as for the press, if the Customer's interests are not put at risk.

7.9. The Customer is obliged to protect the software and other services supplied by the Agency against access, use, manipulation and loss through appropriate measures.

## 8. Remuneration

8.1. The remuneration is generally calculated on the basis of the expenditure incurred in accordance with the Agency's daily rates, which can be adjusted in consultation with the Customer, unless other arrangements have been made for remuneration.

8.2. The invoice for agency services is issued after approval of the service provided, otherwise monthly unless a different arrangement has been made on the basis of a service contract concluded between the parties. The invoice amount is due for payment 10 days after the invoice date without any deduction. If a different payment plan is agreed between the parties, this shall have priority. The Agency shall be entitled to demand advance payments and/or appropriate instalments of the total remuneration when the order is placed and according to the progress of the project or for self-contained parts of the services.

8.3. For services which the agency does not provide at the location of its head office, travel expenses, in particular travel times, travel costs, expenses and, if applicable, overnight accommodation costs shall be invoiced separately. Travel expenses are all additional expenses that are directly caused by a business trip. This includes travel/flight costs, additional meals, accommodation costs and proven or credible ancillary costs (e.g. transport and storage of luggage, airport charges and telephone calls). Travel expenses are billed as follows:

- Flight Economy Class (Business flights can be selected for international flights over four hours flight time)
- Mid-range rental car
- 2nd class railway (or 1st class with Bahncard 50)
- Kilometre flat rate € 0.30/km
- Hotel according to cost, max. 4 stars
- Public transport: according to cost
- Taxi and parking fees: according to cost
- Daily expenses in accordance with the applicable tax guidelines.
- Travel times are charged at 50% of the hourly rate incurred.

In addition, other roles such as additional consulting, coordination, training or presentation appointments will be invoiced on a time and material basis as well as shipping, courier and licence costs or purchase prices for software and/or image material from third parties on presentation of proof using the agreed payment methods.

8.4. Deviating from the above provisions, a contractually agreed remuneration is decisive if the parties have made an explicit provision to this effect, e.g. within the scope of the service offer. The cost estimate is merely an estimate of costs and does not constitute a binding ruling on the remuneration. In this case, the price agreed in accordance with the specifications shall be decisive. If, within the framework of the preparation of the requirements specification, the Agency

considers that individual requirements result in additional expenditure compared to the original estimate of expenditure, the Agency shall report such additional expenditure and the resulting additional costs to the Customer.

8.5. All prices are net prices plus the current statutory value added tax at the time of invoicing.

8.6. Even without a reminder, the Customer shall be in default of payment 10 days after receipt of the invoice.

## 9. Liability

9.1. The parties shall be liable to each other for all damages which they culpably cause to the other party within the framework of the performance of this contract, in accordance with the statutory provisions, unless otherwise stipulated in this contract.

9.2. Within the scope of claims for damages, the Agency shall be liable without limitation for damages resulting from injury to life, limb or health, as well as for damages caused intentionally or by gross negligence. Otherwise, the Agency shall only be liable for damages in the event of breach of a material contractual obligation, the fulfilment of which is essential to the proper execution of the contract and the observance of which the contractual partner regularly relies on and may rely on (cardinal obligation). In the event of breach of cardinal obligations, the obligation to pay damages shall be limited to such damages that the Agency could typically have foreseen at the time of conclusion of the contract.

9.3. The Customer is obliged to regularly backup their data using state of the art means. For the cost of restoring data, the amount of the claim for damages shall be limited to the cost that would be necessary to restore the data if properly backed up by the Customer.

9.4. Claims on the basis of the Product Liability Act and on the basis of guarantees assumed by the Agency shall remain unaffected.

9.5. Section 6.6 shall apply additionally for materials brought in by the Customer.

## 10. Force majeure

10.1. If the Agency is prevented from fulfilling its obligations by the occurrence of unforeseeable, extraordinary circumstances which it cannot avert despite exercising reasonable care, e.g. operational disruptions, intervention by the authorities, energy supply difficulties, strikes or lock-outs, whether these circumstances occur in the Agency's sphere or in the sphere of its suppliers, the delivery period shall be extended by a reasonable amount if the delivery or service does not become impossible.

10.2. If the Customer is prevented from declaring their approval of the software through the occurrence of situations mentioned in Clause 10.1, the approval period shall be extended to a reasonable extent. The same shall apply to the period for the performance of necessary cooperative actions insofar as the Customer is prevented from performing such actions due to force majeure.

## 11. Confidentiality and data protection

11.1. Both parties undertake to use all knowledge of trade and/or business secrets of the other party acquired within the scope of the contractual relationship only for the purpose of implementing this contract and to treat them with confidentiality for an unlimited period of time.

11.2. Both parties also oblige their employees to maintain confidentiality.

11.3. The Agency shall also ensure that all persons entrusted by it with the processing and performance of the contract comply with the statutory provisions on data protection. The obligation to maintain data secrecy required under data protection law must be undertaken prior to the initial commencement of work by the employees. The same applies to employees of any subcontractors involved.

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## 12. Severability Clause

12.1. Should individual clauses of this contract be invalid, this shall not affect the validity of the remaining provisions. If the parties in the contractual arrangement have overlooked a point that needs to be regulated, the provision is deemed to have been agreed upon, which they would have agreed upon, had they known about the gap in the contract, while taking into account the interests of both parties.

## 13. Choice of law and place of jurisdiction

13.1. The law of the Federal Republic of Germany shall apply to these terms and conditions as well as all claims arising from these terms and conditions and contractual claims in relation to services rendered on the basis of these terms and conditions to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Consumer protection regulations of the state in which the consumer has their habitual residence remain unaffected with regard to consumers, from which the law of this state may not be deviated by agreement. If the Customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction and place of performance shall be the registered office of dasistweb® in 83607 Holzkirchen.