General Terms of Contract of medinix Information Systems GmbH

medinix
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medinix Information Systems GmbH performs the contractually agreed services and deliveries (delivery of hardware components; delivery of software; generation of custom-tailored software; installation of hardware, software and networks; system configuration; consultancy services with custom-tailored IT projects) on the basis of the following Terms of Contract and each service description.

I. General provisions

1. General, scope

(1) Our Terms of Contract apply exclusively; we do not acknowledge provisions of the customer that run counter to or deviate from our Terms of Contract, unless we consented expressly to their validity in written form. Our Terms of Contract also apply should we perform the delivery to the customer without reservation, while being aware of provisions of the customer that run counter to or deviate from our Terms of Contract.

(2) All agreements reached between us and the customer for the purpose of performing the services and deliveries contractually agreed on have to be put in writing.

(3) Our Terms of Contract only apply vis-à-vis companies in terms of section 310, paragraph 1, BGB (German Civil Code).

2. Bid, bidding documents, non-disclosure

(1) Should the purchase order be qualified as a bid pursuant to section 145, BGB, we can accept it within 2 weeks.

(2) We reserve property rights and copyrights to figures, drawings, calculations and other documents. This also applies to such written documents that have been designated as "confidential". The customer requires our express written consent prior to forwarding them to third parties.

(3) The customer is obligated to treat all commercial and/or technical details, which are not self-evident and which he learns about within the scope of the business relationship, as business secrets.

3. Prices, terms of payment, set-off, right of retention

(1) Provided that nothing else results from the confirmation of the order, our prices are ex: "company headquarters, medinix Information Systems GmbH, Rickertstraße 26, 66386 St. Ingbert, Germany", excluding packaging. Packaging will be invoiced separately.

(2) Statutory VAT is not included in our prices. It will be disclosed separately in the statutory amount in the invoice on the day of billing.

(3) The deduction of a cash discount requires a special written agreement.

(4) Provided that nothing else results from the confirmation of the order, net payment (no deduction) for the contractually agreed services and deliveries is due within 30 days from the date of the invoice. The statutory regulations with regard to the consequences of default of payment apply.

(5) The customer is entitled to set-off rights only should his counterclaims have been legally established, are beyond dispute or have been acknowledged by us. Furthermore, he is entitled to a retention right as far as his counterclaim is based on the same contractual relationship.

4. Delivery time

(1) The delivery time given by us only begins once all technical questions have been clarified.

(2) Complying with our delivery commitment further requires that the customer fulfils his obligations punctually and properly; this pertains in particular to the provision of all documents and information; where necessary, of the requisite approvals and plans of third parties; as well as to the customer's compliance with the agreed terms of payment. We reserve the right of defence against lack of performance of the Contract. Should the prerequisites not be fulfilled in due time, the period for delivery and service will be extended as seems fit to us; this does not apply should we be responsible for the delay.

(3) Should the customer come into default of acceptance or culpably violate his obligations to co-operate in any other way, we are entitled to demand compensation for any damage incurring to us in this respect, including possible extra expenditures. The right remains reserved to further claims or rights.

(4) Provided that the prerequisites of Item (3) are given, the risk of accidental loss or accidental deterioration of the goods and services delivered by us shall be transferred to the customer at the point in time in which he has come into default of acceptance or debtor's delay.

(5) We shall be liable according to the statutory regulations, insofar as the underlying contract pertains to a firm deal in terms of section 286, paragraph 2, no. 4 BGB or of section 376 HGB (German Commercial Code). We shall also be liable according to the statutory regulations insofar as the customer is entitled to assert that his interest in the further performance of the contract has ceased to exist as a result of a delay in delivery, for which we are responsible.

(6) Furthermore, we shall be liable according to the statutory regulations if the delay in delivery is due to a deliberate or grossly negligent violation of the contract, for which we are responsible. A fault on the part of our representatives or sub-contractors shall be ascribed to us. Insofar as the delay in delivery is due to a grossly negligent violation of the contract, for which we are responsible, our liability for compensation for damage is limited to foreseeable damages that typically occur.

(7) We also shall be liable according to the statutory regulations insofar as the delay in delivery, for which we are responsible, is due to a culpable violation of an essential contractual obligation. In this case, however, our liability for damage is limited to foreseeable damages that typically occur.

(8) As for the rest, in the case of a delay in delivery, we shall be liable for every completed week of delay within the scope of a lump-sum compensation for delay that amounts to 3% of the value of the delivery, yet shall not exceed 15% of the value of the delivery.

(9) The right to further statutory claims and rights on the part of the customer remain reserved.

5. Transfer of risks, packaging costs

1) Provided that nothing else results from the confirmation of the order, delivery ex: "company headquarters, medinix Information Systems GmbH, Rickertstraße 26, 66386 St. Ingbert, Germany" shall be agreed on.

(2) Separate agreements apply for the acceptance of returned packaging.

(3) Should the customer wish it, we will provide coverage of the delivery through a cargo insurance. The costs for this shall be borne by the customer.

6. Liability for defects

1) Should a defect of the contractual services and deliveries be on hand, we shall rectify it by dint of supplementary performance. As far as a defect of our delivery and service is on hand, the choice rests with us as to whether the supplementary performance should be performed as a rectification of the defect or in the form of a new, faultless delivery and service. In this case, we are obligated to bear all the expenditures necessary for the purpose of supplementary performance, in particular: freight charges, travel costs, work costs and material costs, as far as these costs are not increased by the fact that contractually agreed services and deliveries have been delivered to a different location than the place of delivery.

(2) Should the supplementary performance fail, the customer is entitled to demand withdrawal or reduction according to his choice.

(3) We shall be liable according to the statutory regulations, provided that the customers claims compensation for damages that are based on wilful intent or gross negligence on the part of our representatives or sub-contractors. Insofar as we are not accused of deliberate breach of contract, liability for damages is limited to foreseeable damages that typically occur.

(4) We shall be liable according to the statutory regulations, provided that we have culpably violated an essential contractual obligation; in this case, liability for damages is likewise limited to foreseeable damages that typically occur.

An essential contractual obligation is given when the breach refers to an obligation on whose performance the customer has relied and had good reason to rely.

(5) Liability for culpable injury to life, limb or health shall remain unaffected; this also applies to mandatory liability according to the Product Liability Act.

(6) Insofar as not regulated differently above, liability is excluded.

(7) The statute of limitations for claims for defects is 12 months from the date of the transfer of risks.

(8) In the event of a delivery recourse, according to sections 478, 479 BGB (German Civil Code), the statute of limitations remains unaffected. It is five years from the date of delivery of the defective article.

7. Joint liability

(1) Any further liability for damage, other than provided in section I, clause 6 – regardless of the legal nature of the claim – is excluded. This applies in particular to claims for damages attributable to faults at the time of the conclusion of the contract, because of other neglects of duty or because of delictual claims of material damage according to section 823 BGB (German Civil Code).

(2) The limitation according to paragraph (1) also applies, insofar as the customer, instead of claiming compensation for the damage, demands compensation for futile expenditures instead of the service.

(3) Insofar as liability for damages against us is excluded or limited, this also applies to personal liability for damages on the part of our employees, workers, co-workers, representatives and sub-contractors.

8. Data protection, consent of the customer

(1) Within the scope of the contractually agreed services and deliveries, the data transmitted by the customer will be processed and stored by dint of an IT facility.

(2) The customer assents to the collection, processing and use of personal data. Personal data will be treated confidentially. The customer is entitled to revoke his assent to the collection, processing and use of personal data at any time, including with effect for the future.

(3) We collect personal data only insofar as we need it for rendering our service. We do not pass it on to third parties. Excluded from this are only our service partners, insofar as we need them for rendering our services and deliveries. The amount of data transmission is limited to a minimum.

(4) The customer is entitled to demand information, correction, deletion or blockage of his stored data at any time. You will find the contact information (see section I, clause 3 [1]) also in our company details.

9. Processing personal data on behalf of the customer

(1) When personal data is made available to us by the customer and processed and used on his behalf, the customer is responsible for the compliance with regulations, according to the Federal Data Protection Act and other regulations regarding data protection.

(2) We shall process and use data only within the framework of the customer's instructions. Should we come to the conclusion that an instruction by the customer violates the Federal Data Protection Act and other regulations regarding data protection, we shall point this out to the customer promptly.

10. Jurisdiction, place of fulfilment

(1) Provided that the customer is a businessman, our place of business is the place of jurisdiction. Yet we are entitled to bring an action against the customer before the court of his place of residence.

(2) The law of the Federal Republic of Germany applies; the UN law on the sale of goods is excluded.

(3) Provided that nothing else results from the confirmation of the order, our place of business is the place of fulfilment.

II. Special conditions for the delivery of hardware components

1. Liability for defects

(1) The liability for defects complies with section I, clause 6, of these General Terms and Conditions. In addition, the following shall be in effect:

(2) Claims for defects on the part of the customer require that the customer has fulfilled the examination and notification duties in due form, according to section 377 HGB (German Commercial Code).

2. Joint liability

Joint liability conforms with section I, clause 7, of these General Terms and Conditions.

3. Reservation of property rights

(1) We reserve the property rights to the hardware until the receipt of all payments arising from the delivery contract. Should the customer conduct himself in a manner that is contrary to the contract, in particular, should he delay payment, we are entitled to take back the hardware. Taking back the hardware entails our withdrawal from the contract. After taking back the hardware, we are entitled to sell it; the proceeds of the sale is to be deducted – minus appropriate sales costs – from the customer's liabilities.

(2) The customer is obligated to handle the hardware carefully; he is especially obligated to insure the hardware adequately at replacement value against damage arising from fire, water or theft at his own expense. If maintenance and inspection work is required, the customer has to have it carried out at his own expense and in due time.

(3) In the event of seizures or other interventions by third parties, the customer has to notify us promptly in written form so that we are able to file suit according to section 771 ZPO (Civil Process Order). Insofar as the third party is not capable of reimbursing us for the judicial and extrajudicial costs of a suit, according to section 771 ZPO, the customer is liable for the loss that has incurred to us.

(4) The customer is entitled to continue to sell the hardware in the normal course of business; nonetheless, he transfers to us, with immediate effect, all receivables amounting to the invoice total (including VAT) of our payment request, which accrue to him from the resale to his customers or third parties, regardless of whether the hardware has been sold without having been processed or subsequent to having been processed. The customer remains authorised, even after the act of transfer, to collect this receivable. Our authority to collect the receivable ourselves remains unaffected by it. We commit ourselves, however, not to collect the receivable as long as the customer complies with his payment obligations from the proceeds he has collected, does not delay payments and, in particular, as long as no application for settlement proceedings or bankruptcy proceedings has been filed or no bankruptcy is on hand. Yet should this be the case, we are entitled to demand that the customer disclose the receivables and debtors to us; that he deliver all the data required for collection; that he hand over the pertinent documents and that he notify the debtor (third party) about the transfer.

(5) The processing or modification of the hardware by the customer is always performed for us. If the hardware is processed in conjunction with other items not belonging to us, we acquire co-ownership of the new item proportional to the value of the hardware (invoice total, including VAT) with respect to the other processed items at the time of processing. Otherwise, the same applies to the article generated by processing as applies to the hardware delivered under reservation.

(6) If the hardware is inseparably mixed with other items not belonging to us, we acquire co-ownership of the new product in the same proportion as the value of the hardware (invoice total, including VAT) with respect to the other products mixed at the time of such mixing. If the mixing is made in a way that the article of the customer has to be regarded as the principal product, it shall be agreed that the customer will transfer co-ownership to us proportionally. The customer shall safekeep the sole ownership or the co-ownership for us.

(7) The customer transfers to us the receivables to secure our claims against him, which accrue to him from the connection of the hardware with real estate against a third party.

(8) We commit ourselves to release the securities that are due to us at the customer's request insofar as the realisable value of our securities exceeds the receivables to be secured with it by more than 10%; the selection of the securities to be released rests with us.

III. Special conditions for the delivery of software

1. Reservation of property rights

The usage right to any software devolves to the customer only upon the complete payment of the remuneration.

2. Custom-tailored software

a) Specification sheet, documentations, source code

(1) We provide custom-tailored software according to the specifications of the customer. We ensure readiness for operations within the scope of warranty (see below, under section III, clause 2 e). If the customer wishes further maintenance and support, this has to be agreed upon in a separate contract.

(2) The customer's specifications for the generation of the software will be defined by the customer in a specification sheet.

(3) The software that is owed includes the pertinent technical documentations; it includes the source code only insofar as it has been expressly agreed on.

b) Change of the service

1) If the customer wants to change the specifications in the specification sheet before the software has been finished and accepted, in particular because the performance demands made on the software have changed, we will comply with this change request, should it be reasonable within the framework of our operational performance capacity and should the original commission not be put at risk by it.

(2) Each change request has to be in writing.

(3) A claim to the implementation of the change exists only if we have agreed to the change request in writing subsequent to a prior examination.

(4) Change requests cannot be taken into consideration any longer after the software has been finished and accepted.

c) Acceptance

(1) After the finishing of the software, its operability will be demonstrated by dint of a functional test on our hardware and/or our networks.

(2) The test result will be documented in a test report that has to be signed by both parties.

d) Usage rights

(1) We grant the customer the usage rights to the software that was generated according to his specifications pursuant to the intent of the contract.

(2) The customer obtains an exclusive usage right to the software throughout the world and in perpetuity. This right is transferrable and entitles the proprietor to the granting of non-exclusive usage rights.

(3) The usage right, however, does not include new forms of usage in the future.

e) Liability for defects

(1) Liability for defects complies with section I, clause 6, of these General Terms and Conditions. In addition, the following shall be in effect:

(2) The customer is not entitled to rectify defects himself or have them rectified by third parties, unless he finds himself forced to do so because of imminent danger or an urgent operational need; or should we have delayed the rectification of a defect.

f) Joint liability

Joint liability conforms with section I, clause 7, of these General Terms and Conditions.

3. Standard software (software programmes, programme modules, tools and so forth that were developed to meet the needs of a majority of customers in the market and not according to the customer's specifications for the customer)

a) Standard software of third parties
For the sale and usage of the software of third-party suppliers, their General Terms and Conditions as well as licensing terms apply exclusively.

b) Usage rights
(1) For our standard software, we grant the customer the non-exclusive right to use our products in unaltered form to the extent of the agreed type of usage on those devices that have been created for this purpose.

(2) For purposes of data storage, the customer is entitled to produce a copy of each product. In so doing, he is obligated also to copy alphanumeric identifiers, trademarks and copyright qualifiers and to keep records about the whereabouts of the copies. Documentations are not allowed to be copied.

(3) The user can use the software on any hardware he has at his disposal. Should the user change the hardware, however, he has to delete the software from the hardware he has employed up to then.

(4) The user is entitled to copy the delivered programme, insofar as the copying in question is required for the usage of the programme. The necessary copying includes the installation of the programme from the original data media to the mass storage of the hardware that is used, as well as downloading in the main memory.

(5) The user may sell or give the software, including the manual and other accompanying documentation, to third parties permanently, provided that the recipient agrees with the continued effectiveness of the existing Terms of Contract. In the event of a circulation, the user has to hand over all copies of the programmes, including possible back-up copies, to the new user or else destroy the ones that were not handed over.

(6) Retranslating the programme code into other codes, as well as other types of deducing the various generation levels of the software, including programme alterations for own use, is admissible, in particular for the purpose of debugging. Provided that the activity is carried out for business reasons, it is only admissible if it is indispensable for the generation, maintenance or the functioning of a computer programme that had been generated independently and as long as the requisite data has not been published and/or made accessible in any other way.

(7) The customer will ensure that the products, their copies as well as the documentations will not be leased to third parties without our written consent.

(8) In the exceptional event that the customer, due to deviating written regulations in a contractual agreement, has obtained from us an exclusive usage right to the software to be generated and possible work results achieved in the context of the software, we are entitled to utilise our own knowledge or the own knowledge of our co-workers that had been used for the generation of the software and other work results, as well as tools and procedures, which are designed or suitable to be re-used in other services, for the purposes of our business operation. This does not only apply to such knowledge that relates solely to the particularities of the business operations of the customer.

c) Liability for defects
(1) Liability for defects complies with section I, clause 6, of these General Terms and Conditions. In addition, the following shall be in effect:

(2) We guarantee that this software will essentially fulfil the main functions; that it complies with the generally accepted rules of practice and is not flawed by defects that annul or reduce the value or the usability for common use or the use that can be assumed according to the contract with the customer.

(3) Claims for defects by the customer require that the customer has fulfilled the examination and notification duties according to section 377 HGB (German Commercial Code) in due form.

d) Joint liability

Joint liability conforms with section I, clause 7, of these General Terms and Conditions.

IV. Special conditions for the installation of hardware, software and networks, system configuration

1. General
(1) The installation of the delivered hardware, software or networks is in principle done by the customer. The installation has to be done on the basis of the data and documentation included in the delivery.
(2) At the customer's request, we perform the installation of the hardware, software or the network with additional charge.

2. Data storage
(1) The correct data storage prior to the installation of hardware, software or networks rests with the customer. Data storage encompasses all technical and/or organisational measures to ensure the availability, integrity and consistency of the systems, including the data, programmes and procedures saved on these systems and used for processing purposes. Correct data storage means that the measures taken will enable a prompt and short-term recovery of the status of systems, data, programmes and procedures after an impairment of the availability, integrity or consistency has occurred due to a damaging event. The measures include, at the least, the generation and testing of the reconstructability of copies of the software, data and procedures in defined cycles and generations.
(2) If we perform the installation of hardware, software and networks at the customer's request, the customer shall guarantee that our employees will be able to perform a correct data storage in terms of section IV, clause 2 (1), on the customer's system when they install the hardware, software or the network. We are entitled, without being obligated to do so, to generate correct storage/backup copies of the previous work results on our own systems during the installation of hardware, software or the network.

3. Other organisational, technical prerequisites
(1) Should we assume the installation of the hardware, software or the network, the customer is obligated to create, in due time and at his own expense, the prerequisites in terms of rooms, personnel, technology and organisation for the hardware, software or networks to be installed. In particular, the customer shall make possible unhindered access for us to his premises, providing the necessary access data, pass words and so forth, insofar as this is required for us to perform the contractually agreed services and deliveries.
(2) Should the necessary prerequisites for the installation of hardware, software and networks not be given, we will inform the customer about it. We will assume the rectification of the error through suitable measures, should we be responsible for the error; otherwise, the customer will assume it.

4. Acceptance
Subsequent to the installation, the operability of hardware, software or network will be demonstrated by dint of an installation test. The test result will be documented in a test report that has to be signed by both parties.

5. Liability for defects
(1) Liability for defects complies with section I, clause 6, of these General Terms and Conditions. In addition, the following shall be in effect:
(2) The customer is not entitled to rectify defects himself or have them rectified by third parties unless he finds himself forced to do so because of imminent danger or an urgent operational need; or should we have delayed the rectification of a defect.

6. Joint liability
Joint liability conforms with section I, clause 7, of these General Terms and Conditions.

V. Consultancy services and other services

1. General
(1) We conduct consultancy services and other services for the customer on our own responsibility.
(2) The customer bears the responsibility for the project, interfaces and success.
(3) Services arising from contracts for work and services are not the subject of our consultancy or other services.

2. Data storage
Correct data storage rests with the customer, according to section IV, clause 2.

3. Work results, usage rights
According to section III, clause 3 b (8), we are entitled to utilise our own knowledge or the own knowledge of our co-workers that had been used for the generation of the software and other work results, as well as tools and procedures, which are designed or suitable to be re-used in other services.