

General Terms and Conditions CETITEC GmbH

I. Scope of application

1. These General Terms and Conditions are valid for all kinds of services rendered by CETITEC in the IT sector for enterprises. An enterprise in the sense of these Terms and Conditions shall be any natural or legal person or any form of legal partnership performing commercial activities or acting as a self-employed person. CETITEC in particular provides the following goods and services:
 - licensed software products
 - consulting, planning and organisation
 - support
 - services
 - hardware

Maintenance work shall not be subject of this agreement, since this requires a separate maintenance contract.

2. These Terms and Conditions shall apply exclusively to all legal transactions between CETITEC and another party (including all quotations and offers made by and purchase orders accepted by CETITEC), except to the extent the Terms and Conditions conflict with a Sales Agreement signed by CETITEC and another party. These Terms and Conditions apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms and Conditions may in some instances conflict with some of the terms affixed to the purchase order or other procurement document issued by the other party. In such case, these Terms and Conditions will govern, and acceptance of the other party's order is conditioned upon other party's acceptance of these Terms and Conditions, irrespective of whether the other party accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. CETITEC's failure to object to provisions contained in any communication from the other party shall not be deemed a waiver of the Terms and Conditions herein.
3. Any oral agreement must be confirmed in writing before CETITEC considers it to be legally binding.

II. Delivery of goods and services

1. The contractual offers of CETITEC are not binding. Based on its rights of property and copyright, CETITEC reserves all rights of unrestricted exploitation of the documentation, figures, drawings and any other kind of documentation provided in connection with the offer. They must not be made available to any third party without CETITEC's prior written consent and must be returned if CETITEC requests to do so.

2. Any guarantee of qualities requires the explicit confirmation on the part of CETITEC GmbH. Especially the specifications contained in appendices, documentation, brochures or project descriptions, figures, drawings and samples shall not be considered as a guarantee of qualities, unless they are explicitly described as binding. They shall not represent a warranty or guarantee of any kind whatsoever.
3. The delivery times stated by CETITEC, in particular in the order confirmation, shall be generally not binding. They shall only be considered to be binding if the parties have explicitly agreed this in writing. The delivery time shall start with the signature of the contract. If there are any subsequent modifications of the contract, new delivery times shall be agreed. The obligation to observe the delivery times requires that all documentation to be provided by the other party be received in due time and that the agreed terms of payments and any other obligations resulting from the contract be complied with by the other party. Should the latter subsequently modify the terms of delivery, CETITEC shall reserve the right to charge any additional expenses as well as all products or services ordered but not requested.
4. In case of a delay in delivering the goods or services, CETITEC shall be held liable as far as the delay results from non-observance of essential contractual obligations or deliberate action or gross negligence. The other party shall only be entitled to claim damages because of non-performance, even after having fixed a time-limit and giving a warning of non-acceptance, if the delay is based on deliberate action or gross negligence, or, in the case of slight negligence, on the violation of essential contractual obligations.
5. CETITEC shall not be held responsible for delays of delivery which result from force majeure, strikes, lockouts, absence of staff for which CETITEC is not to be blamed, delay on the part of suppliers, intervention on the part of authorities, and similar circumstances. CETITEC shall be entitled to provide the delivery at a later date, after the reason for the delay has ceased to exist. Both parties shall, however, be entitled to withdraw from a contract, completely or partly, if one of the events mentioned above results in a delay of delivery of more than three months beyond the agreed date. Any further claims of the contracting parties shall be excluded.
6. If the other party fails to accept delivery or violates any other duty to co-operate, CETITEC shall be entitled to claim damages for the loss suffered, including any extra expenses that might have incurred.
7. Partial delivery of products and services shall be admissible; the same shall apply to partial acceptance.
8. The acceptance of the work performed shall be made by the other party within 10 working days after delivery if there are no serious deficiencies. Serious deficiencies are only those deficiencies which impair the overall functionality to a considerable extent. An acceptance certificate must be signed by both parties and, where applicable, a list of the serious deficiencies which have been found must be attached to this certificate. These deficiencies shall be corrected in due time. Then a new acceptance shall take place in view of these deficiencies that have been reported. All other deficiencies shall be remedied in the framework of warranty.

9. The work shall be considered to be accepted if the other party does not execute the acceptance procedure within the agreed timeframe and does not report any serious deficiencies at the same time. The same shall apply if the other party starts real-time operation without reporting serious deficiencies.
10. As an essential contractual obligation, the other party shall co-operate as agreed, and also in any other way, and shall provide all required material in due time and in the volume that is necessary. Agreed deadlines shall be no longer valid if the other party fails to supply the material required in due time or if the material is not provided at all or only insufficiently. CETITEC shall not be liable for inadequate and/or incomplete provision of material nor for interaction of third-party products with CETITEC's deliveries and services. All products to be supplied in this context shall be provided in their current version. The other party shall be responsible for the appropriate functioning of the work environment.
11. The other party shall provide the appropriate technology which permits CETITEC to access the system at the other party's site at any time.
12. CETITEC will be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

III. Remuneration and modes of payment, passing of the risk

1. The agreed prices shall be those stated in the order confirmation provided by CETITEC, otherwise the prices from the price list shall apply. Prices include delivery "ex works", including the usual standard packing material, without installation, training or any other auxiliary services, such as travel expenses.

All prices are quoted excluding the legal VAT and, unless otherwise agreed, excluding travel expenses and per diem allowances. Payments shall be due upon receipt of the invoice. In case of new customers, CETITEC shall also be entitled to request payment by cheque or a down payment in advance. Discounts or any other deductions shall not be granted. as of 30 days after maturity, CETITEC shall charge interests of 5% above the basic interest rate. Cheques will only be accepted as conditional payment.

2. A right of retention on the part of the other party shall only be applicable towards final and conclusive, undisputed or recognized claims which are based on the same contract. In the case of a longer lasting business relationship, each individual order shall be considered as a separate contract. A set-off of payments shall only be possible for undisputed or final and conclusive claims.

3. Goods shall be dispatched at the other party's risk and invoice. The risk shall pass to the other party as soon as the goods have been handed over to the person in charge for shipment or the other party has been informed that the goods are ready to be collected.
4. Services shall be invoiced on a time and material basis. If the remuneration is based on time and material, invoicing shall be made on a monthly basis at the end of the month. CETITEC shall provide its services within the usual business hours, from Monday to Thursday between 9.00 and 12.00 and between 14.00 and 17.00, on Friday between 9.00 and 14.00. Extra fees may be charged for services provided outside these business hours.

IV. Retention of title

1. All deliveries on the part of CETITEC GmbH are subject to retention of title. If the other party is a merchant, the property of the products and rights delivered shall pass to him only after each and every payment due under the business relationship has been fully settled. On request of the other party, it shall be possible to transfer ownership of parts of the products under proviso in advance.
2. The other party shall not be entitled to process and alter the products under proviso nor to pledge them or transfer ownership of them by way of security before the title has been passed. It shall only be entitled to sell products under proviso in the framework of usual business transactions and if CETITEC has been informed thereof. In such an event, the other party shall assign all claims towards the buyers of the goods to CETITEC as a security for CETITEC's own claims. CETITEC shall accept this assignment. CETITEC shall reserve the right to collect such claims itself as soon as the other party does not duly meet its payment obligations and is in delay. The other party shall immediately give notice in writing of any access of a third party to the products under proviso or the claims assigned to CETITEC, and inform third parties about the rights of CETITEC.
3. If the other party is in delay with one or several payments, partly or in full, or if it stops its payments or if bankruptcy or composition proceedings have been initiated concerning its property, it shall be no longer entitled to make use of the products under proviso. In this case, CETITEC shall be entitled to withdraw from the contract and to take back the products under proviso in order to use them otherwise or to revoke the authorization to collect payments for the resale. Furthermore, CETITEC shall be entitled to demand information concerning the recipients of the products under proviso, inform the latter about the assignment of the claims and collect the payments itself.
4. The other party shall insure the products under proviso against the usual risks at its own expense for the duration of the retention of title, in particular against loss or damage by fire, water, burglary or theft.

5. If, due to processing and/or mixing, CETITEC has a co-ownership share in the products under proviso that have been sold, the claim to be assigned shall be the value of the co-ownership share, taking priority over the remaining claims. CETITEC shall be entitled to sell the goods and to satisfy its claims, offsetting the revenues from such a sale with its open claims.
6. CETITEC's products are not authorized for use as critical components in life support devices or systems. Life support devices or systems are devices or systems that (a) are intended for surgical implant into the body or (b) support or sustain life, and whose failure to perform, when properly used in accordance with instructions for use provided in the labeling, can be reasonably expected to result in a significant injury to the user. A critical component is any component of a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system, or to affect its safety or effectiveness.

V. Warranty

1. The agreed quality of goods and services provided shall always and exclusively be based on the specification. Public sales talks, advertisements or any other statements shall not be regarded as specification. The other party must report obvious deficiencies in writing to CETITEC without delay, but not later than two weeks after receipt of the delivery. The duties to examine and give notice of defects for merchants shall not be affected thereby. Other deficiencies which cannot be discovered within this delay in spite of thorough examination are to be reported in writing to CETITEC immediately, at the latest six months after delivery.
2. In case of product defects or if guaranteed characteristics are missing, CETITEC, at its own discretion, shall provide corrections or amendments, also in form of an update. The warranty for third-party products shall be restricted to the transfer of warranty claims towards the third-party supplier or shall be considered to be discharged with a warranty granted by the manufacturer. The conditions of the manufacturer supplied with the delivery shall have a higher priority. Services provided by CETITEC in the handling of the manufacturer's warranty shall be remunerated separately.
3. After the second failure or if corrections or replacement deliveries are not possible in due time, the other party shall be entitled to demand either **reduction** of the purchase price or **cancellation** of the contract, any further claims being excluded. Corrections are generally performed on CETITEC's premises. On-site work on the other party's premises as well as an on-site warranty require a separate agreement. Shipment expenses in connection with warranty are to be borne by the other party.
4. The other party agrees to grant CETITEC permission to examine the product complained about before the warranty work is executed, CETITEC having the option to decide whether this examination is to be made at the other party's site or on CETITEC's premises. If the other party refuses this right of examination, CETITEC shall be exempt from the warranty claims.

5. The warranty shall not apply to deficiencies caused by deviation from the operational requirements earmarked for the program and described in the specification. Nor shall the warranty cover the elimination of errors which have been caused by external influences within the other party's sphere, or operating errors, or errors for which the other party is partly responsible. Warranty claims shall also be excluded if the other party does not comply with the operating or maintenance instructions provided by CETITEC, or if the other party or an unauthorized third party have interfered with the product, or if consumables have been used which do not correspond to the CETITEC specification. The same shall apply to damages which result from operating the products delivered by CETITEC together with equipment or programs for which CETITEC has not expressly provided a written confirmation of compatibility. CETITEC shall be entitled to demand restitution of any additional expenses resulting from such influences.
6. The other party shall be responsible for providing evidence that restrictions of utilization or disturbances which are or might be, fully or partly, due to operation, installation or modification of the software or the system environment have been caused by the goods and services provided by CETITEC.
7. The warranty period shall be 12 months. It starts with delivery of the product to the other party.
8. For test installations made free of charge, there shall be no warranty claims and liability shall exist only in so far as it is compulsory according to legal provisions.

VI. Liability

CETITEC shall be liable to pay damages, regardless of the legal cause or reason, as follows:

1. The full amount in case of deliberate action; the amount of the predictable damage which was to be prevented by the duty to exercise proper care or the warranty of qualities, in case of gross negligence.
2. If CETITEC violates an essential contractual obligation or does not comply with a guarantee of qualities given in writing, the liability on the part of CETITEC shall be restricted to the amount of the individual order per claim, the maximum being 25.000.- EUR.
3. All further rights and claims of the other party towards CETITEC because of deficiencies of the products provided shall be excluded, irrespective of their legal cause. This shall also apply to tort claims as far as damage to property is concerned as well as to claims for consequential damages, in particular loss of profit, to claims for damages which have not occurred on the products provided by CETITEC themselves, but as a consequence of their application or their unsuitableness, or which have affected, in any other way, other equipment, property or persons.

4. The exclusion of liability stated above shall not apply to claims resulting from the product liability law and to personal injuries caused by tort. As far as liability is excluded or restricted, this shall also be applicable to the personal liability of staff, representatives or any other auxiliary agents.
5. CETITEC shall be held liable for the occurrence of viruses only if the products are affected by viruses at the moment of delivery and CETITEC would have been able to detect the viruses. The other party shall be obliged to install the current version of an anti-virus program.
6. CETITEC shall be liable for the loss of data only in as much as this loss could not be avoided although the other party has performed the appropriate data back-up procedures and has installed an adequate anti-virus program.

VII. Software rights

1. After the licence fees have been fully paid, the other party shall be granted a non-transferable, non-exclusive right for the internal use of the software for the agreed purpose. The copyright shall remain with CETITEC or its suppliers. A separate agreement shall regulate transferability and the scope of utilization in individual cases.
2. The other party shall not be entitled to make copies of the software or documentation – with the exception of one back-up copy – or to make the software available to a third party, or to confer rights or grant rights of use to third parties. The other party is obliged to store the programs as well as the documentation in such a way that unauthorized persons have no access to them and to mark the copy with a copyright note. Any contravention of this provision shall entail a contractual penalty of 10.000,00 Euro and an indemnity to be paid to CETITEC for the loss incurred because of the failure to comply with this provision. The other party must explicitly inform its employees about their duty to observe these contractual obligations as well as about the provisions of the intellectual property law.
3. CETITEC shall remain holder of all titles even if the other party modifies the program or combines it with its own programs or those of a third party.

VIII. Rights of third parties

1. If claims are raised against the other party because of violation of a trademark right or copyright in connection with products delivered by CETITEC, the latter agrees to procure the right to continue the utilization of these products for the other party. This will, however, only be possible if the other party has informed CETITEC immediately about such claims raised by a third party and if CETITEC has the option to take all necessary legal and extrajudicial measures or use all technical measures available to ward off such claims, notably modification and replacement of the products delivered. Finally, CETITEC shall reserve the right to reverse the contract in order to remedy the deficiency in title, which means that the contracting parties shall return whatever they have supplied under the contract. Further claims of the other party of any other type including patent-related claims shall be excluded, irrespective of their legal cause.
2. Claims against CETITEC under par. 1 shall also be excluded if they have occurred in connection with programs or data of the other party, or if they are based on the fact that the software has not been used in a valid and unmodified original version, or under different environmental conditions and in another way than specified by CETITEC.

IX. Confidentiality and data protection

1. The parties agree to treat all knowledge about confidential information and business secrets of the other party that they have gained, either directly or indirectly, in connection with their business relationship, with strict confidentiality, which is to be maintained without any restriction of time. The other party shall be responsible for making sure that CETITEC will have no possibility to get access to personal data in the framework of support activities.
2. Employees who have access to products under the contract must be informed about copyrights and their obligation to maintain secrecy.
3. CETITEC shall be entitled to include the other party's name and a short description of the work performed in a reference list. All other advertising statements which contain a reference to the other party shall require prior consultation with the latter.
4. The other party agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, the other party agrees to comply with applicable export administration regulations in so far as they apply to the sale of products.

X. Final provisions

1. For all contracts with fully qualified merchants, the place of performance shall be Pforzheim and the exclusive place of jurisdiction either the Amtsgericht Pforzheim or the Landgericht Karlsruhe, depending on which is competent for the subject matter. This place of jurisdiction shall be also applicable if, in case of legal action, the place of residence or the regular abode of the other party is unknown or if the latter does not have a place of residence within Germany.
2. Should individual provisions of these Terms and Conditions or of the contract concluded with the other party be wholly or partly invalid, this shall in no way affect the validity of the contract as such. The invalid provision shall be replaced by a valid one which comes closest to the meaning and purpose of the original provision.
3. Failure by CETITEC to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
4. The governing law shall be the law of the Federal Republic of Germany, excluding the UN law on sales.

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