

General Terms and Conditions for Consultancy and Development Services of msgGillardon AG (as of 06/2019)

§ 1 Scope of the Terms and Conditions

1. These General Terms and Conditions apply to all contracts between the customer and msgGillardon AG - hereinafter referred to as "msgGillardon" - for services within the context of consultancy as well as the development, production and implementation of software programmes.
Such services may in particular include business consulting, system, application and/or organisational consultancy, the creation of individual, self-contained individual programmes or individual programme parts, the planning, realisation, further development and/or maintenance of individual programme systems, programmes and sub-programmes, the implementation of standard programmes as well as other organisational, IT and consulting projects (hereinafter referred to as "consulting and development services").
2. With regard to the aforementioned consultancy and development services which are provided to the customer by msgGillardon the following conditions apply. With respect to licensing and maintenance of standard software, the General Terms and Conditions for Licensing and Maintenance of Standard Software of msgGillardon apply.
3. Conflicting General Terms and Conditions of the customer are not part of the contract, even if msgGillardon carries out an order, without explicitly contradicting such conditions.
4. Agreements intended to deviate from the provisions of these General Terms and Conditions must be in writing in order to be effective. This also applies to any amendment or annulment of this written form requirement.
5. The provisions of a contract have priority over any conflicting provisions of the present General Terms and Conditions.

§ 2 Scope of Service

1. msgGillardon provides consultancy and/or development services in accordance with the service description as specified in the individual offer or contract and otherwise in accordance with the generally accepted practices of technology and the prevailing professional standards at the date the contract is concluded. Within the scope of rendering services msgGillardon is entitled to engage independent contractors and other agents.
2. Also as far as the services are rendered on the premises of the customer, msgGillardon (exclusively) retains the power to instruct its employees.
3. The customer bears the risk whether the services ordered meet its requirements. In case of doubt the latter is advised to seek advice in a timely manner from employees of msgGillardon or any other competent third party.
4. The place of fulfilment is the location of msgGillardon specified in the offer or contract and, if no location is specified, then Bretten near Karlsruhe.

§ 3 Duties to Cooperate and Supplementary Provisions of the Customer

1. The participation of the customer is indispensable for the provision and the successful implementation of the consultancy development services described in the individual contract with msgGillardon. The cooperation obligations of the customer described below in this section 3 as well as additional cooperation obligations of the customer possibly specified in the offer or contract are main performance obligations of the respective contract. These are to be performed free of charge, in due time, in the required quality and scope agreed upon by the contracting parties.
2. At the beginning of the service provision, the customer puts together a team of employees from among its employees. This team must have a strong understanding of the fields affected by the subject matter of the contract, business operations and business processes and must ensure the timely and proper provision of the customer's cooperation obligations. Details on the composition and tasks of the team of employees are specified in the contract.
3. The customer agrees to provide msgGillardon with all the documents and information necessary for the provision of the services in a timely manner.
4. In addition, the customer provides the necessary system environment at the beginning of the service provision and manages and maintains the latter throughout the entire contract period. The maintenance of the system environment also includes the regular backup of data and programmes in adequate intervals, at least once a day, in machine-readable form and in several generations. In order to ensure a smooth implementation of the contract, availability and local access to the

system must be guaranteed free of charge. Restrictions in respect thereto must be communicated to msgGillardon in due time.

5. As far as work is carried out in context of the provision of services on the premises of the customer, the customer shall provide the necessary working conditions within the scope of its operating environment in a timely and free manner.
6. Before the customer begins with the operational use of the work results, the customer is responsible for examining and/or testing the latter thoroughly with respect to significant deficiencies and suitability for use in the concrete situation. This also applies to services the customer receives within the scope of supplementary performance.
7. If the customer provides or has to provide software for the provision of services by msgGillardon, it shall ensure that the rights necessary for the provision of services by msgGillardon exist.
8. If the customer does not meet the obligation to cooperate, not in time or not in the agreed manner, the resulting consequences (e.g. delays, additional costs) are borne by the customer.

§ 4 Cooperation of the Contracting Parties

1. The contracting parties shall designate their respective contact persons, as well as their deputies, before or at the time of the conclusion of the contract. Should any of the aforementioned persons be foreseeably incapacitated for an extended period of time or leave the company, a substitute person must be appointed in due time.
2. The contacts of the contracting parties and their deputies are authorised to receive any statements related to the respective contract. If they are not empowered or authorised to represent or make legally binding statements on behalf of their respective companies, they will promptly prepare the necessary decisions of their respective companies without delay and ensure that such decisions are made quickly.

§ 5 Change Request, Change Request Procedures

1. A change request is a demand of one of the contracting parties, which aims at amending the contractually agreed scope of services. Both parties to the contract are entitled to request the respective other party to discuss and negotiate amendments to the contractually agreed services. Both parties to the contract are obliged to engage, at the request of the other party, in good faith consultations and negotiations with the other party. In this case the contracting parties negotiate the change request in accordance with provisions set out in this section 5.
2. If one of the contracting parties makes an change request, msgGillardon will check whether the change request would give rise to additional expenses. Should the examination of a change request call for significant expenses, msgGillardon will submit an offer to the customer with regard to such examination. Unless otherwise agreed in writing, the examination of a change request and the preparation of an amendment offer are cost neutral.
3. In the event that the preliminary examination of the change request reveals that the requested amendment most probably could be realised, msgGillardon shall in the context of this offer inform the customer, as to which foreseeable impact such an amendment would have on the costs and the agreed timetable. To the extent it is feasible and necessary, msgGillardon will also examine to what extent the amendments would impact the services already rendered, including their usability.
4. Up to the date on which the contracting parties have agreed in writing on the change request, the contracting parties will perform their obligations as originally agreed.
5. In return for reimbursement of the downtime, the customer may demand a partial or complete interruption of service provision pending the agreement on a change request. Any previously agreed deadlines will be extended accordingly by the downtime as well as by the time msgGillardon needs to organise the resumption of the work after an interruption and to make the necessary resources available again. msgGillardon is entitled to claim remuneration if it can not otherwise use its resources.
6. The contracting parties shall determine and mutually agree upon the desired amendments in a written agreement. If an agreement on the change request is not reached, the contracting parties will render or continue performing their respective obligations, according to their initial agreements, unless they agree otherwise.

§ 6 Service Periods/ Dates and Deadlines

1. Agreed service and delivery dates or delivery periods are only binding if these have been designated as such by msgGillardon.

2. Agreed periods of service and delivery are automatically extended by the period in which msgGillardon is prevented without fault from delivering or rendering its services due to labour disputes, force majeure or other unforeseen events. The contracting parties will inform each other about the beginning and the end of such impediments, provided they are aware of them. In the mentioned cases, the customer grants msgGillardon an appropriate run-up period after the end of the impediment.
 3. msgGillardon is only deemed to be in default following the receipt of a reminder. Reminders and the setting of deadlines on behalf of the customer need to be in writing in order to be effective.
 4. In the event that the deadline is exceeded by msgGillardon, the customer shall set a reasonable period of grace, provided that this is reasonable for the customer. After expiry of the period of grace without success the customer is entitled to assert the incurred, demonstrable default damage. As far as it is reasonable the customer undertakes to set a final period of grace before claiming damages instead of the performance or replacement of ineffective efforts from msgGillardon.
 5. Where deadlines are not met due circumstances attributable to the customer, the due dates agreed upon are extended by a reasonable period of time. msgGillardon is entitled to set a reasonable deadline for the provision of cooperation services. Before the assertion of an indemnity in accordance with § 642 BGB (German Civil Code), msgGillardon - unless this is unreasonable - must set a final deadline for the provision of the cooperation services.
2. In the event of payment default msgGillardon reserves the right to temporarily revoke the granted rights of use until full payment owed by the customer has been effected; other statutory and contractual rights due to the delay in payment are not affected by the revocation.

§ 10 Rules for Acceptance

1. The transfer and acceptance of the work results (§ 7), which are described in the contract as works services, i.e. success-oriented services, are to be confirmed vis a vis msgGillardon in writing by the customer in form of a transfer and acceptance report. Success-oriented services usually include development, programming and adaptation of software, for which msgGillardon is responsible.
2. The customer shall immediately test and/or examine the work results. Moreover the customer shall immediately notify msgGillardon in writing of any defects found during the tests and/or examination and assist msgGillardon to reasonable extent in the investigation and elimination of such defects. This includes, in particular, the preparation of a defects report and the provision of any other documents capable of demonstrating the defect.
3. Minor defects do not entitle the customer to refuse acceptance. The work results, which constitute services within the meaning of subparagraph 1, are to be accepted by the customer within four (4) weeks after transfer or provision of the work results for acceptance by msgGillardon.
4. The work results are deemed to be accepted as soon as the work results have been used productively for four weeks and a notification of defects hindering the acceptance has not been made.

§ 7 Rights to Work Results

1. Work results within the meaning of these conditions are evaluations, planning and concept documentation, programme material (for example software) including related documentation, reports, drawings and similar project results from msgGillardon. As far as protectable work results arise in the context of the provision of services, all rights to these work results - in particular, copyrights, rights to inventions and technical property rights - are exclusively retained by msgGillardon, even if such results were created according to specifications determined by the customer or through the collaboration with the customer.
2. If the contract stipulates the transfer of work results to the customer, msgGillardon grants the customer a simple right to use such work results within the scope of the customers' business operations without any limitation in time. The assignment of further usage rights requires express agreement in the contract. With regard to the exploitation and dissemination of work results outside of its business - for example by making available on the Internet or by the provision of data centre services - the customer requires the prior written consent of msgGillardon. Consent must not be unreasonably withheld.

§ 8 Remuneration, Terms of Payment

1. The remuneration referred to in the contract is to be understood plus the statutory value added tax. The customer reimburses the services of msgGillardon in accordance with the contractual agreements and where applicable, the payment plan agreed in the contract. Unless otherwise agreed by the contracting parties, travel times, travel expenses and accommodation costs are calculated according to actual expenses.
2. Unless otherwise agreed, msgGillardon receives remuneration according to expenses in the form of daily rates in accordance with their valid price list. The daily rate covers 8 work-hours per day. Any additional or reduced work will be paid on a pro rata basis. As a rule, the daily rates refer to activities that take place between 8am and 5pm during the period from Monday to Friday.
3. Invoicing according to expenditure is based on the invoice accompanying activity report. If the customer does not object in writing to the specifications set out in the schedule within two weeks, then these are deemed to be accepted. msgGillardon will inform the customer separately of this effect.
4. Invoices submitted by msgGillardon are due for payment within 10 days of the invoice date without deduction.
5. In case of default of payment of the customer, msgGillardon is entitled to charge interest on arrears in accordance with the legal provisions. The right to assert higher damages for late payment remains reserved.
6. The customer may only offset uncontested or legally established claims. The customer may not assign any claims it may have against msgGillardon. § 354 a HGB (German Commercial Code) remains unaffected.

§ 9 Reservation of Rights

1. msgGillardon reserves ownership and the rights to the work results (§ 7) up to the complete payment of the respective remuneration.

§ 11 Regulations for Material Defects

1. msgGillardon warrants that the work corresponds the service description and is free of defects.
2. The limitation period for claims arising out of material defects is 12 months starting with the acceptance of the service (§10).
3. Should defects become apparent, the customer shall immediately notify msgGillardon in writing in a comprehensible manner stating the information that is appropriate for the detection of defects. The customer shall support msgGillardon to reasonable extent in the removal of defects.
4. At its discretion msgGillardon eliminates defects primarily by eliminating the defect (subsequent improvement) or producing a new work (subsequent delivery). The customer shall set reasonable deadlines to allow msgGillardon to rectify the defect by means of supplementary performance. If at least two attempts to eliminate the defects have been unsuccessful - provided that the subsequent improvement by msgGillardon is not unreasonable for the customer - per asserted defect, the customer at its discretion is entitled to exercise its rights in respect of abatement or - if the statutory requirements are given - withdraw from the contract, claim damages instead of performance of services or reimbursement of expenses.
5. Withdrawal from the contract and/or assertion of claims for damages instead of performance of services or claims for reimbursement of futile expenses can only be requested if msgGillardon has seriously breached its obligations. Where contracts establish a continuing obligation the right to withdraw from the contract is replaced by the customer's right to prematurely terminate the contract without notice.
6. Where defects are restricted to parts of the service for which a partial acceptance has been declared or has unjustifiably been refused, the right to withdraw from the contract is limited to these parts of the service, unless the other parts of the service are of no interest to the customer.
7. Any claims arising from defects are excluded if the customer changes or modifies the work results or interferes with them in any other way, unless the latter is able to prove that the respective change or modification is not the cause of the defect.
8. If msgGillardon provides services for the search or elimination of reported malfunctions, the latter may claim compensation in accordance with the current price list if the reported malfunction is not a defect and the customer could have recognised this if the inspection had been duly carried out. Once msgGillardon recognises that the reported malfunction is not a defect, it will immediately inform the customer. An obligation to pay for the aforesaid services exists only from the moment msgGillardon is able to detect the absence of a defect, if the customer then confirms the order to rectify the fault.
9. If msgGillardon has already partially carried out the service, the customer is only able to claim damages instead of the entire service if the latter is not interested in the partial performance of the service.
10. If msgGillardon has not carried out a service due in accordance with the contract, the customer is not entitled to withdraw from the contract and / or claim compensation instead of the entire service or reimbursement of futile expenses if the breach of duty is insignificant.

11. The liability limitations pursuant to § 14 of these General Terms and Conditions apply to claims of the customer for damages or reimbursement of futile expenses due to default.
12. Any other warranty rights of the customer are excluded.

§ 12 Regulations for Legal Defects in Title

1. In the case of legal defect in title with regard to the consultancy and development results, § 11 applies accordingly, unless § 12 contains deviating provisions.
2. msgGillardon is liable for ensuring that the transfer of the agreed right of utilisation to the customer does not infringe any third party rights. msgGillardon provides supplementary performance at its discretion by enabling the customer a legally correct opportunity to use the supplied service, by changing or modifying the work results or by replacing them with equivalent changed work results or by fending off or regulating a third party's proprietary right claim against the customer.
3. If third parties assert proprietary rights against the customer, the customer shall immediately inform msgGillardon in writing.
4. msgGillardon is entitled to defend the customer at its own expense against the claims of third parties. In such an event, the customer shall support msgGillardon in a reasonable manner with fending off asserted claims of the third party as well as with regard to any legal proceedings and refrain from acts (such as an acknowledgement of the claims of the third party) which could prevent msgGillardon from fending off the asserted claim; such an obligation of the customer exists if msgGillardon keeps the customer indemnified from all disadvantages and risks of the dispute and adequately safeguards the latter against these disadvantages and risks.
5. Even after the expiry of the limitation period for liability arising from warranty of title msgGillardon at its discretion is entitled to the right referred to in sub-paragraph 4.

§ 13 Provisions for other Performance Impairments or Breaches of Duty

1. If beyond the liability for material and statutory defects msgGillardon fails to provide due services or does not provide them correctly or violates other obligations under the contract, then the customer must submit a written complaint in writing and grant a period of grace of sufficient length, within which msgGillardon has the opportunity to duly render its services or to remedy this in any other way. Should the customer after unsuccessful expiry of the period of grace (for example, by rescission or termination for important reasons) want to withdraw from the contract, then the customer has to announce this consequence together with the deadline in writing. The requirement of setting a deadline does not apply if the law expressly states this.
2. The liability limitations of § 14 of these Terms and Conditions apply to claims of the customer for damages or reimbursement of futile expenses due to other disruptions in services or breach of duty.

§ 14 Compensation Provisions

1. msgGillardon is liable under the statutory provisions, without limitation
 - for damage caused intentionally or negligently, due injury to life, body or health;
 - due to the lack of warranted characteristics or non-compliance with warranty;
 - for damages which are based on an intentional or grossly negligent breach of duty by msgGillardon.
2. msgGillardon' liability in all cases of contractual and non-contractual liability is limited to the contract-typical foreseeable damages, which are based on a minor negligent breach of essential obligations by msgGillardon. Essential obligations within the meaning of this provision are obligations which enable the proper fulfilment of the contract in the first place and the observance whereon the customer may rely.
3. In all other cases, msgGillardon' liability for minor negligence is limited to an amount of 100,000 euros per contract.
4. Subject to the provisions of the Product Liability Act, any strict liability of msgGillardon is excluded.
5. msgGillardon is liable for causing data loss through minor negligence but only for the typical and ordinary damage, which would also have been caused in the case of a proper and regular data backup by the customer with regard to the importance of the data. This limitation does not apply if the data backup was impeded or impossible due to reasons attributable to msgGillardon.
6. The foregoing provisions apply mutatis mutandis to msgGillardon' liability with regard to the reimbursement of futile expenses.

§ 15 Confidentiality

1. The contracting parties undertake to keep confidential information and documents of the other contracting party which are obviously confidential or which are designated as confidential by the other contracting party, such as operating secrets and business secrets, and treat them with strict confidentiality. This also applies to offers made by msgGillardon and contracts concluded between the contracting parties, as well as all information relating to the contract, including any commercial concessions (information and documents referred to in sentence 1 and sentence 2 are referred to hereinafter collectively as "confidential information"). The contracting parties shall also instruct their employees and third parties accordingly, provided that the latter ordinarily come in contact with confidential information, insofar as they have not already been otherwise bound to confidentiality.
2. Confidential information may only be used for the purpose of the contract. In addition, said information may neither be recorded, stored, duplicated, passed on nor used for own purposes or exploited in any other way.
3. Notwithstanding the foregoing, the contracting parties may disclose confidential information if (i) the latter was already known to the recipient of the information at the time of the assignment, without any obligation to confidentiality, (ii) the information has already been published, or was published later through no legal or contractual fault of the recipient of the information, (iii) which a party to the contract lawfully receives from a third party without any obligation to confidentiality, (iv) the information has been independently developed by the recipient of the information, or (v) legal provisions or orders of governmental bodies require the disclosure of the information or the other contracting party has agreed to this. The contracting parties will, as far as legally permissible, immediately inform each other as soon as they are requested by an authority to provide information concerning confidential information from the other contracting party or are subjected to other sovereign measures.
4. msgGillardon is entitled to include the customer in its reference customer list, unless the contract contains a deviating provision in this respect.

§ 16 Data protection

msgGillardon and the customer will maintain data confidentiality and comply with data protection requirements in accordance with GDPR (General Data Protection Regulation). During the performance of the order, msgGillardon and the customer shall only use the services of such agents or subcontractors who have been committed to data confidentiality and compliance with data protection requirements in accordance with GDPR.

§ 17 Notice of Termination

1. The period of notice is determined in accordance with the rules applicable to the contract. A service contract concluded for an indefinite period may be terminated by the customer only with a period of 30 days.
2. The right to exercise extraordinary termination for good cause remains unaffected.
3. Any notice of termination must be provided in writing.

§ 18 Transferability of rights and obligations

The customer may not transfer the rights and obligations arising from the respective contract to third parties without the prior written consent of msgGillardon. § 354a HGB (German Commercial Code) remains unaffected.

§ 19 Final provisions

1. The law of the Federal Republic of Germany applies, excluding UN Sales Convention.
2. Place of jurisdiction for all disputes arising out of or in connection with this contract is exclusively Karlsruhe, if the customer is a merchant or a legal person under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany.

Bretten, 06/2019

msgGillardon AG, Edisonstraße 2, 75015 Bretten, Germany