Special Conditions of Contract (SCC) - Development Services

to the General Terms and Conditions of EnBITCon GmbH Status: 25

October 2021

1   Scope

These Special Terms and Conditions of Contract (hereinafter referred to as "GTC") shall apply to all contracts of EnBITCon GmbH for the provision of services of individual software development ("**Development Services**"). Customers of the development services are exclusively entrepreneurs (business customers). In addition, the General Terms and Conditions ("**GTC**") of EnBITCon GmbH shall apply. These BVB and the GTC are each available online at https://www.enbitcon.de/rechtliche-informationen/agb/. In the event of any contradictions, these GTC shall take precedence over the GTC.

2   Scope of services

2.1   Within the scope of development services, EnBITCon shall perform consulting, conceptual design and/or implementation work for the customer during the term of the contract within the scope of projects for the introduction, adaptation and/or integration of the customer's IT systems.

2.2   The development services of EnBITCon are described in detail in the offer. This may, for example, contain at least in part a performance specification with the work results to be developed.

2.3   However, it may also result from the offer that the agreed development services are deliberately not conclusively defined in advance, for example because the individual functionalities and properties of the work results have not yet been conclusively determined, but are to be jointly defined as the project progresses. For this purpose, EnBITCon shall assist the customer in an advisory capacity during the cooperation. In these cases, the parties deliberately refrain from agreeing on fixed interim results and work stages at the time of contract conclusion. In order to take account of this dynamic process of software development in the product definition, both parties agree to carry out the software development jointly in an agile manner. Unless otherwise agreed, in these cases the management of the project shall lie with the customer; EnBITCon shall provide the development services in these cases as services; in this respect EnBITCon shall not owe any success under the contract for work and services.

2.4   Insofar as the Parties agree on an agile implementation of the Services, the detailed form of cooperation and project methodology shall result from the Offer.

2.5   EnBITCon shall perform the development services carefully in accordance with the principles of proper professional practice in consultation with the customer.

2.6   Unless otherwise provided in the offer, each party remains responsible for compliance with all laws and regulations applicable to its services / spheres of performance. Under the Contract, neither party will engage in any activity that violates any applicable laws.

2.7   The Parties shall commence at the agreed time with the implementation of the Customer's requirements documented in the service description and additionally in a suitable form (e.g. in a ticket system; the Parties shall agree separately on the details of the ticket system used).

2.8   The development services may be provided on the basis of a (project) schedule that is non-binding for EnBITCon, provided that such a schedule is agreed in the offer.

2.9   The installation of software and any updates is carried out by the customer, who must make a complete data backup of his system before installation. Otherwise, any

Data loss and functional failure solely at the customer's expense. EnBITCon shall support the customer in this regard upon request; the effort required for this shall be charged additionally.

2.10   Unless otherwise agreed in the offer, the scope of services includes the maintenance and support of the developed work results for a period of 30 days from the date of the offer. The period may be extended by separate agreement. Any maintenance and support
/Support services shall be provided by EnBITCon on the basis of a separate offer.

2.11   The scope of services also includes the one-time parameterisation of the software, i.e. the setting and adaptation of existing programme options and functions to the customer's operational requirements (e.g. with regard to the names of the customer's employees), but not the modification of the programme code. EnBITCon shall provide additional parameterisation services at the customer's request; the time and effort required for this shall be charged additionally.

2.12   Unless otherwise agreed, EnBITCon shall not be obliged to deliver documentation of the software to be developed. If the customer desires documentation, he may notify EnBITCon thereof prior to the conclusion of the contract. EnBITCon shall then provide the customer with an offer for such documentation.

2.13   EnBITCon shall be provided with the software in object code. There shall be no claim to surrender or disclosure of the source code. If the customer wishes to deposit the source code, EnBITCon shall be prepared to enter into a separate agreement on reasonable terms and conditions. The customer shall bear the costs incurred in connection with the conclusion of such an agreement.

3   Activity of EnBITCon employees at the customer's site

3.1   If services are rendered by employees or vicarious agents of EnBITCon at the customer's premises, the customer shall provide suitable premises and equipment at its own expense, unless EnBITCon has undertaken to do so.

3.2   The customer shall ensure at its own expense by appropriate organisational and spatial measures that EnBITCon's employees or vicarious agents are not integrated into the customer's operations.

3.3   The customer shall have no right to issue instructions to EnBITCon's employees or vicarious agents. The customer's right to issue instructions within the scope of service contracts or contracts for work and services may only be exercised vis-à-vis a legal representative or a person of EnBITCon designated as authorised to represent EnBITCon.

3.4   EnBITCon shall bear the tax and social security burdens associated with its activities for the customer for itself and its employees. EnBITCon shall be responsible for the fulfilment of all claims arising from the employment relationship of the persons working for and with it. EnBITCon shall in particular comply with the statutory minimum wage regulations vis-à-vis the customer.

4   Special obligations of the customer

4.1   Immediately after conclusion of the contract, the customer shall hand over to EnBITCon all documents from which EnBITCon can see the current configuration of the customer's existing system environment. If EnBITCon determines that a configuration needs to be changed, this change shall be carried out at the customer's expense and risk before the start of the development services.

4.2   The customer shall allow EnBITCon access to its IT systems and provide EnBITCon with test data and computing time free of charge to the extent necessary for the provision of the development services. Furthermore, the customer shall support EnBITCon free of charge by a competent employee who shall perform necessary tests or check adjustments.

4.3   The customer shall make any decisions incumbent upon it with regard to the performance and content of the services without delay and notify EnBITCon thereof, and shall examine any proposed changes by EnBITCon without delay.

Insofar as this is not possible for him, the customer will contribute to immediate escalations. The client is responsible for the control of its employees.

4.4   The customer shall provide EnBITCon with all technical and other documents and information necessary for the successful performance of the development services in a timely manner.

4.5   The parties are aware that an agile approach in the context of development services places high demands on the customer's participation. In particular, the customer shall be obliged to participate in ongoing coordination meetings. If the customer does not participate in one of these appointments and if this leads to a delay in EnBITCon's performance, EnBITCon shall not be in default. As far as EnBITCon's performance is not possible without the customer's cooperation, EnBITCon shall nevertheless retain its claim to remuneration. This shall not apply if the customer was prevented from attending the appointments through no fault of his own. The appointment shall be made up for without delay after agreement between the parties.

5   Contract amendments / Request-for-Change procedure

5.1   Both parties have the possibility to propose a change of the agreed services to the other party (**"Request for Change"**).

5.2   Unless otherwise agreed, all deviations from the offer, in particular modified or additional or extended services, especially if they may affect the (project) schedule, resources and budget/costs, shall constitute a change in the owed service entitling EnBITCon to additional remuneration.

5.3   After an appropriate review period, EnBITCon shall submit an offer to the customer based on the submitted Request for Change, which shall in particular describe the effects on the remuneration and the schedule - if any. The customer shall be free to accept or reject the offer. In the event of an express rejection of the offer or with the expiry of five (5) working days after receipt without feedback by one of the parties, the original agreement shall remain in force.

6   Acceptance

6.1   Work performances, i.e. development performances, which EnBITCon creates for the customer on its own responsibility (cf. Section 2.3) and makes available to the customer, shall be subject to acceptance by the customer, unless otherwise agreed in the offer. Services are not subject to acceptance. It may be described in the offer that defined partial results of work performances are accepted separately (real partial acceptance). Accepted partial results are the basis for the continuation of the work; they are not covered by any warranty rights. In this respect, the object of a separate acceptance is merely the contractual interaction of these partial performances with other results (integration).

6.2   For the purpose of acceptance, EnBITCon shall provide the services rendered complete and ready for acceptance and inform the customer.

6.3   Acceptance requires that the customer inspects the respective development services, subjects them to an acceptance test and confirms their acceptance by the customer in writing or electronically. The inspection shall end at the latest one (1) week after the provision of the services by EnBITCon. If the customer does not declare his acceptance upon EnBITCon's written request after the expiry of the aforementioned period, the performance shall be deemed to have been accepted.

6.4   The customer and EnBITCon shall agree on the course and scope of the acceptance test at the beginning of the contract. For the performance of the acceptance test, the customer shall, as far as agreed, provide test data as well as the test results expected by it in due time before the provision of the trades in the form specified by EnBITCon in the offer and shall create the agreed technical prerequisites. EnBITCon shall be entitled to participate in the acceptance test and to inspect the test results.

6.5   If faults are found during the acceptance test, they are categorised as follows:

6.5.1   Defect class 1 (serious defects): Proper use is excluded in whole or in essential parts. The operating procedure is impaired to such an extent that immediate remedial action is necessary.

6.5.2   Defect class 2 (Significant defects): The use as a whole or in essential parts is impaired in such a way that reasonable work with the work performance is only possible with considerable effort. A short-term remedy is required.

6.5.3   Error class 3 (other errors): Use is not significantly impaired, rectification is necessary but not urgent.

6.6   If defects of defect class 1 or 2 are found, the acceptance shall be deemed to have failed. If there are five (5) or more defects of defect class 3, this shall correspond to a defect of defect class 2 and shall also constitute a failure of acceptance. The customer shall notify EnBITCon of the failure of the acceptance and shall set a reasonable deadline for rectification.

6.7   Without prejudice to other rights, the customer may reject services that do not meet the agreed requirements. The customer may not refuse acceptance due to insignificant defects. All defects shall be notified in writing or electronically and shall be remedied by EnBITCon within the scope of the warranty for defects.

6.8   The productive use of the Development Services, whether in whole or in part, shall be deemed to be acceptance of the entire Development Services subject to acceptance.

6.9   If the customer refuses acceptance due to not insignificant defects, he shall notify EnBITCon thereof in writing, stating the defects, and shall set EnBITCon a reasonable period of time to remedy them. EnBITCon shall remedy these defects within this period. The acceptance shall then be carried out again.

6.10   Prior to acceptance, the customer's right of retention due to defects is excluded. The customer accepts that software is not fully executable during the development period and that demo routines and individual modules do not provide sufficient information about the overall function of the software and its future freedom from defects.

7   Prices and terms of payment

7.1   Insofar as development services are invoiced on a fixed-price basis, 30% of the order sum shall be due upon placement of the order, a further 40% upon delivery of the work ready for acceptance, a further 10% after acceptance by the customer and a further 20% upon commissioning by the customer.

7.2   The development services shall otherwise be invoiced on a time basis. The prices stated in the EnBITCon price list available at https://www.abc-systemhaus.de/preisliste shall be deemed to have been agreed, unless the parties stipulate different prices in the offer.

7.3   Unless otherwise agreed, EnBITCon shall be entitled to invoice a development effort expected for the following month monthly in advance. Further development services rendered on a time basis shall be invoiced monthly in arrears by EnBITCon. Invoices shall be due for payment immediately after their issue. Unless otherwise agreed, the customer authorises EnBITCon to collect the payments to be made by him from an account to be named by the customer.

7.4   If the customer defaults on a payment, EnBITCon shall be entitled to suspend the development services until the outstanding invoice has been settled.

7.5   EnBITCon may increase the agreed prices (including the price list) for recurring services in continuing obligations without the customer's consent at its reasonable discretion by up to 10 % per year at the most with effect for the future, but for the first time no earlier than four (4) months after the beginning of the term of the contract. The price increase for partial services is only possible if these were already agreed for at least four (4) months. The price increase shall only be made to cover increased costs. The customer shall be responsible for proving that the price increase made by EnBITCon was not made for this purpose.

7.6   If the customer is a consumer, he may terminate the current contract within two (2) weeks after receipt of the written price increase notification with a notice period of three months to the end of the month in case of a price increase according to clause 7.5. In this case, the previous fee shall be charged until the end of the contract, i.e. the increase shall not take effect. However, the customer's consent is deemed to have been given if the customer does not give notice of termination within this period. This assumes that we have pointed out the consequences to the customer with the change notification.

8   Rights of use to work results

8.1   Insofar as EnBITCon creates individual results (hereinafter referred to as **"work results"**) within the scope of the provision of development services, EnBITCon shall grant the customer a simple right of use, limited in time and space, for its internal corporate purposes. EnBITCon grants this right to the customer subject to full payment and, in the case of work performances, subject to acceptance.

8.2   Unless unlimited use has been expressly agreed, the customer acquires the right to use the software on as many workstations integrated in a local network as agreed. The basis of assessment for this is the number of licences listed in the associated offer as well as any special agreements made (quantity scales, unlimited licences, etc.). Workstations in the network also include home workstations belonging to the network, portable computers temporarily connected to the network and remote workstations. If these merely serve as substitutes for workstations connected to the local network, no additional workstation licence is required. If the agreed number is exceeded, fault-free operation is not guaranteed. Simultaneous operation also includes the use of the software on portable computers.

8.3   Until full payment and, if applicable, acceptance, the Client shall have the right to test the work results as agreed; this shall not include the right to operational use. This right to test shall expire if the customer is in default of payment of the remuneration for more than thirty (30) days. A separate reminder by EnBITCon shall not be required for this purpose.

8.4   Clause 8.1 shall not apply to standard products that are part of the work results. Standard products are in particular delimitable products or solutions of EnBITCon or of third parties that are subject to their own licence conditions. This also includes products or components that are open source software.

8.5   Irrespective of the granting of rights of use according to clause 8.1, EnBITCon shall remain the owner of all intellectual property rights to the work results, even if the customer modifies them or combines them with its own software products or those of a third party. In case of such modifications / connections, the customer shall attach a corresponding copyright notice.

8.6   The right of use granted under clause 8.1 is not transferable. Marketing of the work results by the customer is not permitted. Decompilation / reverse engineering of the software is prohibited. Changes to the programme code by the customer are also not permitted.

8.7   EnBITCon shall be entitled to make unrestricted use of the work results, including the know-how acquired in the performance of the services, in particular the concepts, procedures, methods and interim results on which the work results are based, subject to compliance with its confidentiality obligations.

8.8   As far as within the scope of EnBITCon's performance work results are created which are patentable, utility modelable or designable, EnBITCon shall be entitled to file a corresponding application for property rights in its own name and for its own account. EnBITCon shall grant the customer the right to use the property right together with the work results to the extent required. A separate remuneration for this property right licence shall not be payable.

9 Warranty for material defects

9.1   Insofar as the parties agree on an agile project approach, it follows from the nature of the agile approach of the parties that the elimination of defects by EnBITCon shall be carried out in each case in the ongoing project and the efforts provided by EnBITCon and paid for by the customer. Unless otherwise agreed, these activities shall be remunerated on a time and material basis.

9.2   In all other respects the following shall apply: In case of defects of the work results EnBITCon shall guarantee the elimination of defects as soon as and as far as such elimination is possible for EnBITCon. The removal of defects shall also be deemed to be a reasonable possibility of circumventing the defect in relation to the work results (**"workaround"**) made available to the customer by EnBITCon, provided that an insignificant defect remains after taking the workaround into account.

9.3   The customer's claims for defects shall become statute-barred twelve (12) months after the statutory commencement of the limitation period. This period shall not apply if longer periods are prescribed by law. Legally required notifications of defects by the customer must be made immediately in writing with a precise description of the problem. Only the contact person (clause 2.2 of the GTC) is authorised to give notice of defects.

9.4   The customer shall have no right of retention if its claims for defects are time-barred. If the notification of defects is unjustified, EnBITCon shall be entitled to claim compensation from the customer for the expenses incurred by it. The support provided by EnBITCon shall be remunerated by the customer at the prices agreed with EnBITCon or, in the absence of an agreement, at the prices customary in the market.

9.5   Claims for defects on the part of the customer do not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability or in the case of damage arising as a result of faulty or negligent handling or in the course of a breach of obligations to cooperate.

9.6   EnBITCon has created the software solely for the system environment described in the offer. If it is deployed or used in other system environments, for example under other operating systems or other system configurations, malfunctions based on this circumstance shall not be deemed a defect. EnBITCon shall not assume any responsibility for the functionality of the software in other system environments. The customer may, however, conclude a separate full maintenance contract with EnBITCon, which shall also manage the operability of the software after update and upgrade of operating software and hardware drivers.

10 Warranty for defects of title

10.1   EnBITCon warrants that the work results provided shall not infringe any third party rights if used by the customer in accordance with the contract. This warranty requires that the customer immediately notifies EnBITCon in writing of any third party rights asserted against him and leaves the legal defence and settlement negotiations to EnBITCon. The customer shall support EnBITCon free of charge to a reasonable extent, in particular by providing EnBITCon with the necessary information. Legal obligations of the customer to give notice of defects shall remain unaffected. Rights in this sense are only those to which the third party is entitled in the Federal Republic of Germany as well as in the states in which the customer uses the work results provided as intended.

10.2   If the customer cannot use the provided work results in accordance with the contract due to a conflicting right of a third party, EnBITCon may, at its own discretion, either (a) modify the services in such a way that the right of the third party is no longer infringed, or (b) procure for the customer the required authority to use the work results. Self-performance by the customer or by involving third parties is excluded. Clause 4 of the GTC shall apply to claims for damages by the customer.

10.3   The customer shall have no claims based on defects of title insofar as the work results provided have been modified after acceptance by the customer or third parties, unless the customer proves that the infringement of rights is not a consequence of the modifications. The customer shall also have no claims in the event of infringements of rights as a result of a combination of the work results with such services or products of third parties who are not subcontractors of EnBITCon in this respect.

10.4   If the notification of defects is unjustified, EnBITCon shall be entitled to demand reimbursement of the expenses incurred by EnBITCon from the customer. The support provided by EnBITCon shall be remunerated by the customer at the prices agreed with EnBITCon or, in the absence of an agreement, at the prices customary in the market.

11   Confidentiality

11.1   Unless otherwise agreed, the work results provided shall be subject to confidentiality.

11.2   EnBITCon shall be entitled to keep a copy of the work results and other documents from the development services for purely internal purposes, even if these contain information requiring secrecy. However, this authorisation does not imply any obligation, i.e. EnBITCon may in particular not reserve any storage capacities beyond the period of the project processing. The customer shall be solely responsible for the storage of its work results.

12   Term and termination

Beyond the periods of notice agreed in the offer, if any, the customer has no right of revocation or ordinary termination, in particular not during any minimum contract period agreed. The right of termination according to § 648 BGB is excluded.