

## General terms and conditions for Consulting services of



An der Welle 6, 60322 Frankfurt am Main, hereinafter TMCon

### **1 Area of application**

- 1.1 The present terms of business regulate the performance of IT-consultation services and IT services under the umbrella concept Consulting services by TMCon.
- 1.2 Consulting services of TMCon for the purposes of these terms and conditions are, e.g., a planning specification or documentation services, installation or configuration services, the production of interfaces or Prozess-Mappings or the realisation of tests, briefings and trainings, the processing of Change Requests or Managed Services.

### **2 Contract conclusion**

- 2.1 A contract about the performance of Consulting services comes about by the written acceptance of an offer of TMCon by the customer. If the acceptance occurs after expiry of an acceptance period named in the offer, the delayed acceptance is deemed to be a new request for the delivery of an offer by TMCon. Notices of acceptance of the customer under extensions, restrictions or other changes of the TMCon offer need a written acknowledgment of receipt by TMCon.
- 2.2 If the customer needs the generation of own order for his internal processes, he will formulate the text of his order in such a way that this corresponds to the offer TMCon. Deviating formulation in the order of the customer only become a component of a contract if TMCon confirms this expressly.
- 2.3 Purchasing conditions of the customer deviating from the present general terms and conditions find no application even if TMCon executes an order of the customer without contradicting expressly the purchasing conditions made reference to in the same.

### **3 Contract contents**

As far as not agreed otherwise in writing in particular cases, the contents of a consultation contract are finally regulated in a respective offer.

### **4 Rendering the performance**

- 4.1 TMCon will produce the services agreed in the consultation contract with the due diligence required for proper professional practice, taking into account the generally accepted rules of technology at the time of performance.
- 4.2 Customer-specific requirements on approaches, methods and/or quality standards is only obliging for TMCon, as far as these are confirmed in writing by TMCon.
- 4.3 Deadlines specified by TMCon are only obliging if they are expressly confirmed by TMCon in writing as obliging. Deadlines specified in the respective offer are non-binding planned values, which TMCon states on the basis of experience values with comparable task formulations.
- 4.4 If the service performance on time by TMCon assumes certain co-operation services of the customer, agreed performance dates shift accordingly if the customer does not produce the necessary co-operation services on time, not completely or insufficiently. Further rights of TMCon remain unaffected by this.
- 4.5 As far as, for the service performance, the deployment is not absolutely required on site with the customer and is not agreed in writing, TMCon is entitled at its own discretion to produce consultation services also from a headquarters of TMCon.

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### **5 Handing over, tests, acceptance**

- 5.1 As far as a consultation contract contains the production of a certain work result, the handing over to the customer occurs according to the arrangements in the respective consultation contract.
- 5.2 If the consultation contract intends that TMCon carries out certain tests for verification of the contract-appropriate service performance, their realisation assumes that the customer helps, on this occasion, in the necessary extent, in particular makes available suitable test data, the agreed IT resources and the necessary staff. As far as the realisation of the tests requires the co-operation by third parties, it is a job of the customer to take care of it that these third parties help with the tests in the agreed manner and at the agreed time.
- 5.3 If the parties within the scope of a consultation contract have agreed on the acceptance by the customer of a work result to be produced by TMCon, the acceptance occurs in the absence of deviating written arrangements in particular cases as follows:
  - 5.3.1 TMCon will indicate the provision of the work result for acceptance to the customer.
  - 5.3.2 On receipt of the notification of availability, the customer will immediately begin with the tests necessary for the acceptance. If the customer, for technical reasons, is not able to do this himself, he will instruct competent third parties - on time before the planned acceptance appointment - with the realisation of the acceptance test at the cost of the customer.
  - 5.3.3 If the parties have agreed on certain test scenarios for the checking of the acceptance test maturity within the scope of a consultation contract, the customer will carry this out as agreed.
  - 5.3.4 If deviations relative to the work result to be accepted appear within the scope of the acceptance test in terms of the agreed target condition, these deviations are to be recorded by the customer, to be classified according to a comprehensible recognized error class classification and to be reported to TMCon immediately.
  - 5.3.5 The customer may refuse the acceptance only in case of presence of an error if thereby the contract-appropriate use of the work result to be accepted is not possible and/or a reasonable avoidance solution does not exist for the majority of the errors.
  - 5.3.6 TMCon has to remove the errors which prevent the acceptance within an adequate term and to provide its service performance to the customer once more for acceptance.
  - 5.3.7 The preceding regulations of section 5.3 are valid for the renewed acceptance accordingly.
  - 5.3.8 The acceptance is deemed as given if the customer does not accept the work result within an adequate term set by TMCon, although he is obliged to do it.
  - 5.3.9 Furthermore, the acceptance is deemed as given if the customer uses the work result to be accepted productively for more than 30 calendar days.

### **6 Personnel deployment**

- 6.1 The service performance by TMCon occurs through staff which is sufficiently qualified for the performance of the services defined in the consultation contract. Choice and deployment planning are determined by TMCon.
- 6.2 The staff used by TMCon is subject to the exclusive instructions of TMCon. The customer is not entitled to give instructions to the staff of TMCon.
- 6.3 TMCon can exchange a staff person used at its own discretion at any time.
- 6.4 The customer can require the replacement of a staff person used by TMCon for the realisation of the contract if this person has repeatedly and seriously violated the contractual duties of TMCon.
- 6.5 TMCon undertakes to keep to the in each case valid minimum wage regulations.

as of 01/2018

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### **7 Using subcontractors**

- 7.1 As far as not expressly agreed otherwise in writing in the respective consultation contract, TMCon is entitled to also have contract services produced by subcontractors. TMCon is liable for a fault of a subcontractor like for its own fault.
- 7.2 As far as subcontractors need access to confidential data and/or information of the customer for the performance of duties assigned to them, TMCon will transfer any duties concerning secrecy and/or data protection arrangements between TMCon and the customer to the subcontractor by adequate contractual arrangements with his subcontractors.
- 7.3 TMCon undertakes to only use subcontractors who commit themselves towards TMCon to the observance of the in each case valid minimum wage regulations. By request of the customer, TMCon will present to the customer a written acknowledgement of the subcontractor in which the latter confirms the observance of the minimum wage regulations.

### **8 Co-operation duties of the customer**

- 8.1 If TMCon depends on the co-operation of the customer for the performance of consultation services, the customer will produce the necessary co-operation and provision services free of charge.
- 8.2 TMCon is not responsible for delays in the service performance which are based on the fact that the customer or a third party commissioned by the customer does not produce the necessary co-operation or provision services, is late in doing so, produces them incompletely or badly.
- 8.3 TMCon can charge the customer separately for any additional expenditure of TMCon which originates from omitted, late, incomplete and defective co-operation or provision of the customer or a third party commissioned by the customers if the customer is in delay with the co-operation duties being incumbent upon him. Other rights of TMCon remain untouched by this.

### **9 Notice of termination**

- 9.1 If the production of a certain work result is an object of a consultation contract, a termination by the customer before contract fulfilment is only possible for important cause. Any right to premature termination according to §649 S.1 Civil Code is excluded.
- 9.2 If services are to be produced for a certain period according to the respective consultation contract, a proper termination before expiry of the agreed period of service is excluded. The same is valid if the parties have agreed on the acceptance of a firmly agreed service contingent instead of a firm performance period. In this case, a proper termination is also excluded before entire acceptance of the agreed service contingent. The right of the parties to extraordinary termination in presence of an important reason remains untouched by this.
- 9.3 Every termination notice needs the written form. The writtenform requirement can only be renounced in writing by mutual agreement.

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### **10 Rights to work results**

- 10.1 With entire payment of the agreed remuneration the customer receives, for the work results which TMCon has created for the customer on the basis of a consultation contract, the right to use the work results concerned according to the present definitions and conditions in the respective present consultation contract in accordance with the requirements. With cases of any contradictions to the present terms and conditions, the definitions in the respective individual consultation contract are valid with priority.
- 10.2 In the absence of deviating arrangements in the respective consultation contract, the customer is entitled to multiply work results which are delivered in the form of IT programmes, in the extent necessary for proper data protection. Here, any proprietary rights notices of the original have taken over unchanged. The production of further copies is only permitted as far as these are necessary for the designated use of the work results.
- 10.3 The application of work results for other and/or connected enterprises needs the explicit written approval by TMCon.
- 10.4 In the absence of deviating arrangement in the respective consultation contract, the customer is not entitled to grant sublicences to the work results to third parties, in particular also not by way of renting or the leasing.
- 10.5 Translations and processing of the work results are only allowed if TMCon has granted such rights to the customer in the respective consultation contract.
- 10.6 Up to the entire payment of the agreed remuneration, the customer only acquires a temporary right revokeable by TMCon for the designated use of the handed over work results. The exercise of the right to revoke does not mean withdrawal from the relevant consulting contract.
- 10.7 If third parties enforce the foreclosure into the assets of the customer, before the customer has paid the agreed remuneration, the customer is obliged to point out the reservation of rights to these former during this time and to point out the right to revoke of TMCon.
- 10.8 If the parties have agreed in the respective consultation contract that the customer should exceptionally acquire exclusive rights of use with entire payment of the agreed remuneration, the legal acquisition of the customer, nevertheless, does not include descriptions, templates or software elements which TMCon uses as an aid for the production of the work results.

### **11 Remuneration**

- 11.1 As far as not otherwise agreed in the respective consultation contract, a given daily rate includes eight (8) working hours in a working day. With more than 8 hours of work on a working day, the additional expenditure is compensated with a suitable hourly rate.
- 11.2 In the absence of deviating arrangement in the respective consultation contract, TMCon bills the produced services monthly at the end of one performance month
- 11.3 Bills of TMCon are payable 10 calendar days after invoice receipt without deduction.
- 11.4 All prices of TMCon are plus the legally applicable value added tax
- 11.5 The customer is only entitled to the right to hold back payments or to offset against counterclaims if his counterclaims are undisputed or legally established.

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### 12 Cost estimate

- 12.1 Cost estimates are only obliging if they are expressly confirmed by TMCon in writing as obliging. Without suitable acknowledgement, cost estimates are non-binding planned values which TMCon has determined on the basis of the information known until then and demands of the customer according to the experience values with comparable task formulations.
- 12.2 If TMCon recognises within the scope of the realisation of an individual consultation contract that the delivered cost estimate cannot be kept to, TMCon will immediately inform the customer of this. Thereafter, any changes in service will be re-agreed.

### 13 Quality defects of work results

- 13.1 With cases of quality defects in work results to be created by TMCon within the scope of an individual consultation contract, the customer is entitled to ask subsequent performance from TMCon within an adequate term. Nevertheless, this is not valid for quality defects which are based on faulty or incomplete information of the customer, on use contrary to the terms of the agreement, on changes to the work results by the customer or by a third party commissioned by the customer or on other circumstances which are not under the responsibility of TMCon.
- 13.2 The customer will reprimand any quality defects of the work results created by TMCon immediately after knowledge thereof. In the reprimand, the customer will describe the defect and the accompanying circumstances under which the defect has appeared in a manner necessary for the analysis and the delimitation of the error, inclusive of all necessary additional information.
- 13.3 If a subsequent performance is objectively impossible, or TMCon finally refuses the justified subsequent performance, or the subsequent performance fails within an adequate period for reasons not under the responsibility of TMCon, the rights of the customer are determined by the statutory provisions. As far as TMCon is obliged afterwards to damage compensation or substitute of the costs, the liability limitations specified in Section 15 below apply for such a liability claim.
- 13.4 Claims of the customer because of quality defects of work results created by TMCon come under the statute of limitations within one year after delivery. If the parties have agreed on the acceptance of the work result by the customer in the respective consultation contract, the limitation begins divergently with the acceptance.
- 13.5 Claims of the customer because of quality defects of work results created by TMCon come under the statute of limitations divergent from the regular legal statute of limitations if TMCon has fraudulently concealed a defect, caused it intentionally or negligently or has taken over a warranty analogously §443 sect.1 Civil Code for the missing constitution. The regular legal period of limitation is also valid if the life, the body or the health of a person is injured by a quality lack of the work result created by TMCon. Any claims of a customer because of quality defects of work results according to the product liability law remain also untouched by the limitation period regulations agreed here.

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### 14 Defects in title

- 14.1 If a third party argues towards the customer that the designated use of the services produced by TMCon violates the property rights of the third party by the customer, TMCon undertakes at its option and expense either to change the services concerned in such a manner that they do not violate the property rights of the third party any more, or to replace them or to obtain the right for the customer to be able to use the services concerned in accordance with the requirements. If TMCon does not succeed with this under adequate conditions, the customer is entitled to withdrawal from the respective consultation contract and the services received are to be returned mutually. TMCon may deduct a reasonable compensation for the previous use of the services in question for the compensation to be reimbursed by TMCon in the context of the reversal.
- 14.2 TMCon will indemnify the customer within the scope of liability limitations agreed in the following section 15 against all damages and costs which originate to the customer on grounds of infringement of property rights that has been acknowledged in writing by TMCon or legally ascertained from the designated use of the services produced by TMCon on request by the customer.
- 14.3 The customer undertakes to inform TMCon immediately of any infringement of property rights asserted against the customer. The customer will not recognise claims of third parties without previous written approval of TMCon. If the customer suspends the use of the services affected by the alleged infringement of property rights, the third party will be informed that the cessation of use does not constitute acknowledgment of the infringement of property rights alleged by third parties.
- 14.4 The customer will coordinate any defensive measures towards third parties with TMCon to begin with and leave the defence towards third parties, including any settlement negotiations, to TMCon within the scope of the juridically possible. Necessary court and lawyer costs that resulted to the customer from the legal defence go at the expense of TMCon.
- 14.5 As far as the customer has to represent the infringement of property rights himself, claims of the customer against TMCon because of the infringement of property rights are excluded. This is valid in particular when the infringement of property rights is caused by services which were created according to customer specifications or the infringement of property rights is based on the fact that the customer has used the services of TMCon deviating from the regulations of these terms of business and/or the arrangements in the respective consultation contract.

### 15 Liability

- 15.1 TMCon is liable in case of malice, intent or gross negligence in accordance with the statutory provisions.
- 15.2 The liability of TMCon for a possible loss or a damage of data of the customer is limited to the cost which would be necessary with proper data protection by the customer to recover the data from the secured data material. Nevertheless, this is not valid, as far as the parties have expressly agreed in the respective consultation contract that the realisation of proper data protection is a performance object of the services to be produced by TMCon.
- 15.3 The above limitations of liability also apply in favor of the legal representatives, employees and vicarious agents of TMCon.
- 15.4 Compensation claims because of quality defects of the work results created by TMCon come under the statute of limitations within the periods named in 13.4. and 13.5. The in each case valid legal periods of limitation are valid for all other liability claims.

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15.5 Any liability claims of the customer according to the product liability law remain untouched by the preceding regulations on liability limitation. Also, the above limitations of liability shall not apply to damages resulting from injury to life, limb and / or health or from the violation of a condition guaranteed by TMCon according to §433 sect. 1 for Civil Code.

### 16 Force majeure

16.1 TMCon is not responsible for performance delays on grounds of force majeure.

16.2 Force majeure is an event entering from outside which cannot be foreseen and which, even with careful application of technically and economically reasonable means, cannot be averted or cannot be averted in time. Force majeure can be present in particular in case of the following events:

War, uprising, riots, embargo, explosion, fire, flood, storm, terrorist attacks, sabotage, nuclear or nuclear reactor accidents, strikes, epidemics, landslides / avalanches, failure of communication networks / Internet / technical defects.

16.3 If an event of force majeure leads to the fact that TMCon can not fulfil its services, not completely or not on time, TMCon will inform the customer immediately in writing about the kind of the event and the prospective effects on the contractual duties, in particular on the performance of the contractual services.

### 17 Secrecy

17.1 All documents and data of the customer which the customer passes on to TMCon for the purpose of the realisation of a consultation contract remain in the property of the customer.

17.2 Both parties commit themselves to keep secret all not generally evident and generally accessible information which becomes known to them on account of the underlying consultation contract - hereinafter "confidential information" - and to use it only for the realisation of the consultation contract concerned.

The obligation to confidentiality is null and void when the respective party proves that these contents were known to it before the announcement of the information by the other party and it was allowed to use this freely and without secrecy obligation or have been made available by an authorized third party before or after the date of such disclosure for the purpose of free use, without any obligation of confidentiality, or were made known or generally available to the public before or after the date of notification by the respective party.

17.3 Both parties are entitled to pass on or make available to the necessary extent the confidential information entrusted to them by the other party in connection with the execution of a consulting contract to the employees, lawyers, tax advisors and auditors employed by them for the performance of the contract. This also applies to companies that TMCon uses as a subcontractor.

17.4 Before confidential information is made accessible according to section 17.3, the respective third parties are to be instructed about their duty of secrecy and to undertake a written secrecy obligation.

17.5 The imposed secrecy obligations keep their validity up to five years after ending of the respective consultation contract.

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### 18 Data protection

- 18.1 The customer will inform TMCon unprompted before conclusion of a consultation contract about all essential points, whose knowledge beyond the general data protection regulations is necessary for TMCon for the proper execution of contract for privacy and other confidentiality reasons.
- 18.2 As far as TMCon collects, processes or uses data by order of the customer in connection with the fulfilment of its performance duties from a consultation contract, TMCon undertakes to protect these data with the due diligence of a prudent businessman against unauthorized access, changes, destruction or loss.
- 18.3 As far as TMCon collects, processes or uses personal data of the customer within the scope of the realisation of a consultation contract, the parties will work mutually to make an additional agreement to the respective consultation contract necessary according to the appropriate data protection laws for the protection of the personal data. Responsibly for the purposes of the respective data protection act is with the customer.
- 18.4 TMCon undertakes to only collect, to process and to use personal data of the customer according to the appropriate data protection laws. Employees of TMCon are obliged under the data confidentiality according to §5 BDSG if they collect, process and use personal data of the customer.

### 19 Final provisions

- 19.1 Verbal additional agreements need the written form. All changes and supplements to the present terms and conditions and/or the provisions in the respective consultation contract, also the abolition of the written form requirement, need the written form for effectiveness.
- 19.2 The present terms and conditions as well as all consultation contracts which are concluded under validity of the present terms and conditions are subject to the laws of the Federal Republic of Germany to the exclusion of conflict-of-law rules that refer to other legal systems, even excluding the UN Sales Convention (CISG).
- 19.3 Exclusive legal venue is Frankfurt am Main. Nevertheless, TMCon is entitled to sue the customer at his respective legal venue.
- 19.4 As far as the customer is entitled on grounds of the arrangement in the respective consultation contract to use work results of a consultation contract abroad, he is obliged to observe and comply with the relevant export regulations independently and on his own responsibility.
- 19.5 Should a provision of a consulting agreement concluded under these conditions be or become ineffective or contain a loophole, the validity of the remaining provisions of the consulting contract shall remain unaffected. In place of the invalid provision or a loophole, an effective provision shall be deemed to have been agreed, which economically comes closest to the will of the contracting parties. In the case of a legally inadmissible deadline, an effective period is deemed as agreed.