

General Terms and Conditions of DATAKOM Gesellschaft für Datenkommunikation mbH

General Terms and Conditions

1 Contractual basis

1.1 Scope of application

These General Terms and Conditions of Business (GTC) shall apply to all legal transactions and all services and/or deliveries of DATAKOM Gesellschaft für Datenkommunikation mbH [DATAKOM GmbH] within and outside of Germany.

1.2 Order of precedence of contractual provisions

All contractual agreements shall be in the following order of precedence: a) Individual contractual agreements; b) Special contractual conditions c) These General Terms and Conditions; d) Statutory regulations. The agreements mentioned first shall always take precedence over those mentioned last in the event of contradictions.

Gaps shall be filled by the respective subordinate provisions. The general terms and conditions of DATAKOM GmbH shall apply exclusively. They shall also apply to all future business relations even if they are not expressly agreed again. expressly agreed upon again. Counter confirmations or general terms and conditions of business of contractual partners are hereby expressly contradicted.

This shall also apply if the offer or acceptance of an offer by a contractual partner is made with reference to the overriding validity of its own General Terms and Conditions.

1.3 Type of services and products

DATAKOM GmbH shall provide services and product deliveries in the field of IT security, IT measurement technology and IT derivation technology. The type and scope of the services rendered and/or products delivered shall result from the the offer and the technical service descriptions. Service descriptions within the meaning of the GTC, the BVB as well as other contracts and declarations of DATAKOM GmbH shall be only those documents which are explicitly designated as service description.

The legal basis for

- Hardware deliveries
- Software deliveries
- Services / consulting services
- Support and maintenance are regulated in the following.

Insofar as an offer is not based on any special contractual conditions, these General Terms and Conditions shall apply exclusively. Unless expressly agreed, DATAKOM GmbH shall in no case render a service under a contract for work and services within the meaning of §§ 631 ff. BGB. This shall also apply if individual services rendered are confirmed by the customer by countersigning performance records, timesheets or other confirmations of performance are accepted by the customer, i.e. their performance is confirmed as such.

2 Content of the Services

2.1 Hardware deliveries

With regard to all hardware deliveries, performance shall be deemed to be agreed ex place of business of DATAKOM GmbH. All transport and delivery costs shall be borne by the customer unless otherwise expressly agreed. DATAKOM GmbH shall not assume any procurement risk vis-à-vis suppliers. The transport risk shall be borne by the customer. The contractual purpose within the meaning of § 434 para. 1 sen. 2 no. 1 BGB shall be determined exclusively by the description of services in the offer. Deviating agreements require written confirmation.

2.2 Software deliveries

a) General

To the extent provided for in the offer, DATAKOM GmbH shall deliver software to the customer. It is expressly pointed out that DATAKOM GmbH shall neither program the software to be delivered itself nor adapt it individually to the customer's requirements, unless this is expressly part of the offer. Without express agreement there shall in no case be a claim to surrender of the source code. An installation of the software is only owed if this is an explicit part of the offer. Unless agreed upon between the parties, DATAKOM GmbH shall not prepare its own documentation for delivered software, but shall pass on to the customer the documentation of the developing party of the software.

b) Copyrights, rights of use and exploitation

The rights of use and exploitation resulting originally from the copyrights shall as a rule lie with the developer of the software, who in turn shall contractually regulate the transfer of the rights of use and exploitation to third parties. Insofar as no parties, the type and scope of the transfer of the rights of use and exploitation to third parties shall be governed by the rights of use and exploitation of the Software shall be governed exclusively by the license terms of the respective developer of the software. DATAKOM GmbH cannot give a guarantee for the actual existence of these rights of use and exploitation on the part of the software-developing party. Claims with regard to such rights of use and exploitation are to be addressed exclusively to the respective developing party of the software.

2.3 Services / Consulting services

a) General

DATAKOM GmbH shall provide services and consulting services in the field of IT security and/or installation and implementation of supplied hardware and software. It is expressly pointed out that these services and consulting services as a service contract in the sense of §§ 611 ff. BGB (German Civil Code), unless there is an explicit contractual deviating contractual agreement exists.

b) Invoicing

The billing of services and consulting services shall be based on the time spent. The smallest calculation unit is 4.0 hours for on-site appointments, otherwise 1.0 hour. Should the actual time spent be less than the full 1.0 hours in each case, the time billing will be rounded upwards.

For this purpose, as a rule, a daily rate or a price for a calculation unit of 1 hour will be agreed upon, at which the customer will receive services and consulting services at his own discretion and to his own extent. The agreed prices are binding for one year after the conclusion of the contract.

Insofar as fixed prices have been agreed for services and consulting, these shall apply subject to the expressed requirement that the IT system environment on which the planning by DATAKOM GmbH is based permits implementation at the fixed price. The same shall apply to the required efforts of cooperation of the customer (Section 2.5). If a service and/or consulting service cannot be performed due to changed IT system environment at the customer's or insufficient cooperation by the customer, DATAKOM GmbH shall inform the customer thereof without delay. In this case, the parties shall mutually agree on a different remuneration based on time and materials. If no agreement can be reached in this respect, the contract shall be deemed not to be effective. If no agreement can be reached in this respect, the contract shall be deemed not concluded in case of doubt. Already services shall be invoiced on a time and material basis at the prices applicable at the time the services were provided.

Agreed appointments for the provision of services and maintenance are binding. If dates agreed are canceled by the customer with a lead time shorter than 3 (three) working days, DATAKOM GmbH shall be entitled to claim the costs incurred by the customer. This shall include costs for any consulting efforts in case the resources can no longer be otherwise assigned due to the short notice of the postponement.

2.4 Support and maintenance

a) General

DATAKOM GmbH shall owe support and maintenance services only if this has been contractually agreed between the parties. Support and maintenance services shall be provided as a service. The type and scope of the support and maintenance services owed shall result from the offer and the service descriptions. DATAKOM GmbH shall be entitled to render the support and maintenance services by third parties at its own discretion. If in this case a service and maintenance contract is concluded between the customer and the third-party service provider, all legal claims of the customer regarding support and maintenance services arise solely from this contractual relationship and are to be asserted directly against the third-party service provider.

b) Billing

Support and maintenance fees are to be understood as a fixed price, i.e. there is no billing according to the actual time spent. Unless explicitly agreed otherwise in individual cases, support and maintenance fees are to be paid annually in advance. A refund of support and maintenance fees already paid is excluded.

2.5 Duties to cooperate

In order to ensure the contractual performance by DATAKOM GmbH, the customer shall undertake, without receiving special remuneration, all technical prerequisites in order to enable DATAKOM GmbH to properly perform its services. In particular, the customer shall ensure that DATAKOM GmbH receives with sufficient lead time, the complete information required on the IT infrastructure. This shall include the provision of the information of an IT and project organizational nature required for the proper provision of the service (e.g. hardware and operating systems, standard software used, organizational charts) and the

provision of the hardware and/or software (including documentation) for which the contractual service is to be provided. If applicable, the customer has access to its servers and system environment during the term of the contract. If access to external providers is required for this purpose, the customer shall ensure that these providers consent in writing to the access by DATAKOM GmbH.

The customer expressly releases DATAKOM GmbH from claims for damages and other claims within the framework the provision of the services through access in particular of third-party providers. The customer ensures that during the service provision by DATAKOM GmbH competent employees who are familiar with the EDP system and the IT infrastructure of the customer are available as a contact person during normal business hours.

As far as the customer will receive drafts, program test versions or similar documentation before or during the provision of the contractual services, he has to carefully examine the compatibility with regard to his own IT systems and point out any existing problems or IT conflicts.

For certain services, attacks on the system environment are simulated at the customer's request (e.g. Hacker attacks). In these cases DATAKOM GmbH is expressly authorized by the customer to access the IT infrastructure of the customers to the extent necessary for the provision of the respective service. This access usually takes place via a customer approved IP address.

For these services, DATAKOM GmbH points out the risk that data within the IT infrastructure may be damaged or deleted. The customer hereby ensures that regular data backups are carried out prior to the delivery of these special services conducted by DATAKOM GmbH.

3. Provisions for hardware deliveries, software deliveries, services and consulting and support and maintenance

3.1 Warranty

a) Hardware / Software

For hardware and/or software deliveries, the customer's claim for damages due to defects shall be excluded. Excluded from this shall be claims arising from injury to life, body or health if DATAKOM GmbH is responsible for the breach of duty, and other damages based on an intentional or grossly negligent breach of duty by DATAKOM GmbH.

A breach of duty by DATAKOM GmbH is equivalent to that of a legal representative or vicarious agent. The limitation period for all further rights from warranty claims shall be 1 year. In all other respects, DATAKOM GmbH shall only warrant that hardware and/or software delivered is not afflicted with defects at the time of delivery which nullify or more than insignificantly reduce the value or the suitability for the usual use or the use assumed under the contract.

For wear and tear and for defects caused by improper use and by non-compliance with the manufacturer's, assembly, installation and/or operating instructions, DATAKOM GmbH shall not provide any warranty. The warranty shall furthermore expire in the event of intervention or other manipulations by the customer or third parties commissioned by the customer. DATAKOM GmbH points out that according to the nature of software development it is not possible to create software completely free of errors. Unless expressly agreed otherwise, DATAKOM GmbH shall not assume any warranty that the

software meets the special requirements of the customer or that it is compatible with programs of the customer or the hardware available at the customer. The customer shall notify defects in writing and as detailed as possible. DATAKOM GmbH shall be free at its own discretion to provide warranty by rectification or replacement. In this case, the costs incurred for the purpose of rectification (in particular transport, travel, labour and material costs) shall be borne by DATAKOM GmbH. In the event of failure of the rectification of defects or replacement delivery, the customer shall be entitled to demand reduction of the remuneration or withdrawal from the contract.

b) Services / consulting services Support and maintenance

The warranty for services and consulting services and/or support and maintenance results from the legal provisions of the service contract, §§ 611 ff BGB. DATAKOM GmbH points out that essential parts of the systems environment (software, hardware, networks) may not be available during the provision of support and maintenance services.

3.2 Liability

The liability of DATAKOM GmbH shall be excluded - irrespective of the legal grounds. This shall also apply to the liability of employees, representatives and vicarious agents. The exclusion of liability shall not apply - insofar as the cause of damage is due to intent and/or gross negligence - for damages from the injury of the life, the body or the health, which are due to a negligent breach of duty by DATAKOM GmbH or an intentional or negligent breach of duty by a legal representative or vicarious agent of DATAKOM GmbH, - for claims arising from the product liability – the product liability law applies. Insofar as DATAKOM GmbH violates duties essential to the contract, the duty to compensate shall be limited to the arising damage.

3.3 Retention of title

All delivered hardware and software shall remain the property of DATAKOM GmbH until the complete fulfilment of the respective payment claims against the customer have been settled (goods subject to retention of title). The customer agrees to use the goods subject to retention of title only in the ordinary course of business. The customer's claims arising from the resale of the goods subject to retention. The customer's claims from the resale of the reserved goods, including all ancillary rights, are already assigned in full to DATAKOM GmbH at the time the contract is concluded. Should the customer be in default of payment for the goods subject to retention of title or cease its payments or should composition or insolvency proceedings be instituted against the assets or the company of the customer, DATAKOM GmbH shall be entitled to terminate the contract.

3.4 Change of the place of installation; relocation of products abroad

The customer shall notify DATAKOM GmbH in writing of any changes in the place of installation 2 weeks in advance. DATAKOM GmbH points out that a change of the place of installation may result in the fact that individual or the entire support services can no longer be provided or can only be provided at higher prices. This shall apply to relocation of the place of installation to other countries than the original delivery destination.

3.5 Poaching of employees

Both parties mutually undertake not to poach employees from each other, i.e. for for a permanent or freelance position directly at the customer/at DATAKOM GmbH and/or to attempt a solicitation. In the event of a violation of this provision, a contractual penalty shall be agreed upon, which shall be at the discretion of the of the deciding court.

3.6 Mention of references

DATAKOM reserves the right to state the name of the customer as a reference if required. In particular cases, DATAKOM may also provide information to other potential clients about the content and scope of the assignment without disclosing details that either violate applicable data protection regulations or confidentiality provisions or that would result in possible risks to the client with regard to risks to reputation, IT risks, the physical well-being of its employees or other legal violations.

3.6 Data protection

DATAKOM GmbH undertakes to comply with the provisions of data protection law. Insofar as the customer transmits personal data to DATAKOM GmbH, the customer warrants that it will collect, store, use and disclose the personal data in accordance with the applicable provisions of the applicable data protection law, and - within the framework of the contractual cooperation - to pass them on to DATAKOM GmbH having received all necessary declarations of consent.

3.7 Confidentiality

Both parties mutually undertake to keep confidential any know-how and trade secrets which they learn about each other during the performance of the cooperation and to keep all know-how which is not generally known secret from third parties and to instruct their employees accordingly.

This applies in particular - but not exclusively - to all information about business partners, customers, company internals, technologies and processes used with the with the exception of the information mentioned in section 3.5.

3.8 Term / Extraordinary Termination

Services and consulting services as well as support and maintenance shall be provided as a continuing obligation. Unless otherwise agreed, termination shall be possible in writing at the earliest after one contract year with a notice period of three months to the end of the month in written form. If the contract is not terminated at this point in time, it shall be extended by further contractual year.

In the case of continuing obligations, DATAKOM has an extraordinary right of termination for good cause within the framework of the statutory provisions. Good cause in this

in this sense exists in particular in the event of the opening of insolvency proceedings. § Section 119 of the Insolvency Code remains unaffected. DATAKOM GmbH shall have the right to withhold services within the scope of the statutory provisions in case of default of payment and insufficient cooperation by the customer.

3.9 Payments

Unless otherwise agreed, all payments shall be due 30 days after receipt of the invoice without discount deduction. DATAKOM GmbH reserves the right at its own discretion to render services only against advance payment. A right of retention of the customer shall only exist limited to the same contractual relationship and in case of defects only to the amount of three times the expenses required to remedy the defects.

Offsetting with counterclaims is only permitted if these are undisputed or have been legally established. In case of default of payment by the customer, the claims of DATAKOM GmbH shall be governed by the statutory default provisions. In the event of any damage caused by delay of payment, DATAKOM GmbH shall be at liberty to assert these damages against the customer.

In the case of continuing obligations, DATAKOM GmbH shall be entitled to notify the customer of a price increase at the latest 8 weeks prior to the start of the planned increase. The increase in prices shall be deemed to be accepted if the customer has not terminated the agreement in writing within 4 weeks from the date of notification of the increase.

4 General Provisions

All business relations of DATAKOM GmbH shall be governed exclusively by the laws of the Federal Republic of Germany.

The UN Convention on Contracts for the International Sale of Goods is explicitly excluded. Place of performance for delivery and service shall be the registered office of DATAKOM GmbH. Exclusive place of jurisdiction shall be Munich, as far as legally permissible. DATAKOM GmbH shall be entitled, at its own choice to assert its own claims at the place of jurisdiction of the customer.

5. Mediation clause

The parties shall attempt to solve all problems arising during the execution of this agreement amicably by means of negotiations. If the parties do not succeed in resolving their differences amicably within 60 days of the negotiations, they shall initiate mediation proceedings in accordance with the Rules of Procedure of the Gesellschaft für Wirtschaftsmediation und Konfliktmanagement e.V. (gwmk). The same shall apply if negotiations are not commenced within 30 days of receipt of the request.

No party shall be prevented by this agreement from instituting summary proceedings in court, in particular detention or interim injunction proceedings.

Explanation regarding good IT security solutions and IT security services:

IT system security and IT security services include the protection of IT systems and information through prevention, protection, and response to improper access from inside or outside an enterprise ecosystem.

Improper access can lead to the modification, destruction, misappropriation, or misuse of information. Improper access can also result in damage to or misuse of an enterprise's IT systems including for attacks against other individuals or companies.

No IT system, product or service can be considered completely secure. Due to the nature of cyber attacks, no single product, service or IT security measure can be completely effective in preventing an improper use or access.

The systems, products and services we provide as DATAKOM are designed to be part of a legitimate, comprehensive IT security approach, which necessarily includes additional operating procedures and may require other systems, products or services to be most effective. We therefore cannot guarantee that any systems, products or services will be immune from malicious or illegal conduct by a party or make your business immune from it.