

# Bitkom's contractual terms for software development -VES Bitkom-

(VES Bitkom, Version 2.1)

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## 1. Subject matter of the contract

- 1.1 The provider shall develop software for the customer in accordance with the service description (see Item 2.2) underlying the concluded contract.
- 1.2 The copy of the software to be submitted to the customer by the provider contains only an executable form.
- 1.3 The software shall be provided together with an operating manual (user documentation and/or online help). The operating manual shall be drafted in the language of the software's user interface, unless agreed otherwise.  
  
Supply or creation of further documentation requires a separate written agreement, in particular, on the content and scope of the documentation.
- 1.4 The provider shall create the software and the operating manual (jointly: deliverables) in compliance with the principles of professional conduct.
- 1.5 Analysis, planning, consulting and training services are not the subject matter of this contract and are not owed by the provider.

## 2. Collaboration between the contractual partners

- 2.1 The customer shall notify the provider of the technical and functional requirements for the software in full and in detail, and supply the provider in a timely manner with all documents, information and data required for software development. This also includes a description of practical and suitable test cases and data for validation of attributes (Item 7.1).
- 2.2 The service description shall finally convey the required software attributes. The service description shall only be amended in accordance with Item 3. The provider shall render analysis, planning and consulting services, also in connection with the service description, only on the basis of a separate contract in exchange for separate remuneration (also see Item 1.5).
- 2.3 The provider shall engage the customer's designated contact person (Item 2.1 of the document titled 'AV Bitkom' - as a project manager, insofar as required for contract execution. The decisions made by the contact persons must be documented in writing.
- 2.4 The customer has no claim to service provision at their own premises.

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### 3. Procedure for changes to services

Both contractual partners can recommend changes to the service description (Item 2.2) and service provision. The following procedure is agreed for this:

- 3.1** The provider shall preview the customer's recommendation for change and inform them whether or not a detailed assessment of this recommendation is necessary.
- 3.2** If a detailed assessment of the recommendation for change is necessary, the provider shall inform the customer in a timely manner about the expected, necessary period of time and the remuneration. The customer shall accept or reject the assessment mandate within a reasonable period of time.
- 3.3** If a detailed assessment of the recommendation for change is not necessary or the mandated assessment has been completed, the provider shall either
  - a) submit a written offer concerning implementation of the changes (change offer) to the customer. The change offer encompasses, in particular, amendments to the service description and their effects on the service period, planned deadlines and remuneration; or
  - b) inform the customer that the recommendation for change cannot be implemented within the scope of the agreed services for the provider.
- 3.4** The customer shall either reject a change offer within an acceptance period specified therein (binding period) or declare acceptance in writing or another form agreed between the contractual partners. The customer shall promptly notify the provider of any rejection.
- 3.5** The provider and customer can agree that services affected by a recommendation for change be interrupted until the end of the assessment, or - if a change offer is submitted - until expiry of the binding period.
- 3.6** Until an offer for change is accepted, work shall continue on the basis of the previous contractual agreements. The service periods are extended by the number of calendar days in which work was interrupted in connection with the recommendation for change or its assessment. The provider can request a reasonable remuneration for the duration of the interruption (Item 3.5), unless the provider uses their employees affected by the interruption in a different way or wilfully refrains from use.
- 3.7** On request by the provider, the change procedure is to be documented in writing or in text on one of the provider's forms, unless agreed otherwise. Any modification to the service description shall be agreed in writing or another form by the contractual partners.

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- 3.8** Items 3.2 through 3.7 apply accordingly to the provider's recommendations for change.
- 3.9** Recommendations for change must be addressed to the contractual partner's contact person (Item 2.3).

## **4. Rights of use and protection against unauthorized use**

- 4.1** On full payment of the owed remuneration, the provider shall grant the customer a non-exclusive right to use the deliverables within their enterprise in perpetuity, within the contractually intended scope of use, unless agreed otherwise. Transfer of rights of use to third parties is only permitted if the customer completely relinquishes these rights. The customer undertakes to impose the obligations and restrictions of use relevant to them on the third party. This applies especially to the obligations as set forth in Item 5.8. On the provider's request, the customer shall confirm relinquishment of own use in writing.
- 4.2** Otherwise all rights remain with the provider.
- 4.3** The provider is authorized to take appropriate technical measures to prevent use contrary to the contract. Use of the software in an alternative or subsequent configuration must not be significantly affected by this.
- 4.4** The provider can revoke the customer's right of use if they significantly breach the restrictions of use or other rules on preventing unauthorized use (see also Item 5.8). The provider shall set a grace period of remedy for the customer beforehand. In the event of recurrence and in special circumstances which justify immediate revocation, bearing in mind the interests of both sides, the provider can also declare revocation without setting a deadline. After revocation, the customer shall give the provider written confirmation that use has been suspended. The provider shall restore rights of use for the customer after they have submitted and assured in writing that there are no more breaches of these rights of use, and previous breaches as well as their consequences have been eliminated.

## **5. Customer's obligations**

- 5.1** The customer shall ensure that specialist staff are available for supporting the provider during the project, for validation of attributes (Item 7.1) following handover, and for deployment of the software.
- 5.2** At the provider's request, the customer shall supply suitable test cases and data for validation of attributes in a machine-readable form (see Item 2.1). If the customer fails to supply such test cases and data, the provider may select and develop suitable test cases independently in exchange for additional remuneration.
- 5.3** The customer undertakes to download software provided for this after notification of availability.

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- 5.4** The customer shall report defects, especially as set forth in Item 2.4 of 'AV Bitkom'. The provider's relevant forms and procedures shall be used for this purpose, unless agreed otherwise.
- 5.5** The customer shall support the provider to the extent necessary during contract execution and rectification of defects as per Item 2.2 of 'AV Bitkom', and supply other analysis material.
- 5.6** The customer shall promptly inform the provider about any changes in operating conditions following handover.
- 5.7** Unless agreed otherwise, the customer shall additionally store, at their premises, all documents, information and data submitted to the provider in such a way that these can be reconstructed using data media in the event of damage or loss.
- 5.8** The customer must not undertake anything which might facilitate unauthorized use. In particular, the customer must not attempt to decompile software unless they are authorized to do so. The customer shall promptly inform the provider if said customer becomes aware that unauthorized access is imminent or has occurred in their sphere.

## 6. Handover and transfer of risk

- 6.1** Unless agreed otherwise, the provider may also supply the customer with deliverables via electronic transmission or as downloads. If deliverables are made available as downloads, the provider shall notify the customer of this.
- 6.2** Insofar as deliverables are submitted electronically, the risk of accidental loss is transferred to the customer on receipt by the telecommunications operator which the provider has tasked with forwarding.
- 6.3** Insofar as deliverables are made available for downloading, the risk of accidental loss is transferred to the customer on availability and related notification for said customer.

## 7. Validation of attributes and customer's claims due to defects

- 7.1** The customer shall examine all supplied deliverables, in particular, software or executable software components agreed as partial deliveries, immediately - as a rule within 14 calendar days - for absence of defects and, in particular, presence of the contractually agreed attributes (validation of attributes). To this end, the customer shall use test cases and data practical and suitable for the software (see Item 2.1). The provider can perform coordination with the customer as regards test procedures, besides attending and supporting the validation of attributes on-site.

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- 7.2** Defects occurring during or after validation of attributes will be reported duly by the customer without delay, but no later than seven calendar days from discovery (Item 5.4).
- 7.3** Applicable additionally is the commercial examination and defect notification obligation (§ 377 of the German Commercial Code).
- 7.4** The provider shall guarantee that the deliverables possess the contractually agreed attributes during contractually compliant use. Item 4 of the document titled 'AV Bitkom' applies additionally to material defects. Item 5 of the document titled 'AV Bitkom' applies additionally to defects of title.
- 7.5** The customer may assert claims due to defects only if the reported defects can be reproduced or proven in another way. Items 5.4, 7.2 and 7.3 apply, in particular, to reporting of defects.
- 7.6** If the customer is entitled to claims due to defects, said customer initially only has a right to supplementary performance within a reasonable period. Supplementary performance includes, at the provider's discretion, either remedy or production of a new deliverable. The customer's interests are to be considered adequately in the choice.

The customer shall enable installation and removal for the provider in the scope of supplementary performance, unless this is unreasonable for the customer. Before taking own measures to remedy defects, the customer shall consult the provider.

Any entitlement of the customer's to reimbursement of expenditure is limited to a reasonable extent, taking into consideration the value of the relevant performance in faultless condition and the significance of the defect.

- 7.7** If supplementary performance fails or cannot be implemented for other reasons, the customer can reduce remuneration in accordance with legal requirements, rescind the contract and/or request compensation for damages or expenditures - within the scope of Item 6 of 'AV Bitkom'.

If supplementary performance is delayed, Item 3.4 of 'AV Bitkom' applies to the provider's compensation for damages and expenditures. Item 6 of 'AV Bitkom' applies, in particular, to compensation for damages and expenditures.

The customer shall exercise a right of choice to which they are entitled regarding these claims due to defects within a reasonable period, generally within 14 calendar days from the time of being able to realize the customer's right of choice.

## 8. Validity of 'AV Bitkom'

Bitkom's general contractual terms (document titled 'AV Bitkom') apply additionally.

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