

# General Terms and Conditions of proventis GmbH

## § 1 Scope of these General Terms and Conditions

1. These General Terms and Conditions and the Price and Terms Lists of proventis shall apply to all contractual relationships under which proventis GmbH (hereinafter referred to as "proventis") renders services to other entrepreneurs, legal entities of private or public law or public law based special entities (hereinafter referred to as "principal").
2. proventis shall render its services based upon the guidelines and professional standards applicable after the quotation has been submitted provided same are generally applied at the time the quotation is submitted, pursuant to its written quotation or the written assignment. proventis shall be under no obligation to render any services beyond the aforementioned.
3. These services shall in particular include the following:
  - Organizational and business administrative consulting, in particular in the disciplines of project and quality management;
  - Technical consulting and support of any kind, either on location or via remote communication;
  - Software modifications and additions or related support;
  - Installation of software and programming of required interfaces or related support;
  - Training of principal's employees at the latter's premises based on the stipulations of the respective applicable price and terms list of proventis;
  - Acquisition and provision of software programmes by proventis to the principal, whereby the scope of the provided software programmes and their precise description shall be stipulated in the written quotation or in the written assignment
  - Services rendered under maintenance agreements
4. Software programmes as described above are data processing programmes that are stored on data media. The application manual shall be part of such software programmes. Said application manual shall be deemed adequate if it is also stored on data media, however, it may also be included in written form.
5. Conflicting provisions – in particular the General Terms and Conditions of the principal shall not become integral parts of the contract, even if proventis performs a contract without expressly objecting to such terms.

## § 2 Contract Solicitation and Execution of Contract

1. Any objects provided by proventis prior to the execution of the contract (e.g. idea sketches, proposals, test programmes, concepts) shall be the intellectual property of proventis (ref. § 9); their reproduction shall be prohibited and they shall not be made available to third parties. In the event that a contract should not be executed, same shall be returned or deleted and shall not be utilized. Moreover, the pre-contract promissory relationship shall be subject to these General Terms and Conditions also, in particular the liability limitation clause pursuant to § 12.
2. proventis shall have the option to accept offers from principals within four weeks. Any quotations submitted by proventis shall be subject to change. Contractual declarations made by either party shall be made in writing. In the event of doubt, the quotation or order confirmation issued by proventis shall determine the content of the contract.
3. Commitments of any kind that establish further obligations on the part of proventis than those stipulated in these Terms and Conditions shall be subject to the express and written confirmation by proventis. Warranties shall be

subject to the express and written confirmation by the executive management of proventis.

## § 3 Binding Contract

1. The cooperation between the parties requires a maximum of trust, collaboration and willingness to arrive at agreements. Notices regarding deadlines shall be at least 12 business days (with the exception of matters of urgency). The party required to perform shall respond to any setting of deadlines immediately.
2. The termination of any continued exchange of services (e.g. in the event of rescission, termination for important cause, damage compensation or reduction in lieu of service) shall always be threatened by giving notice with a deadline and shall be subject to clarification within two weeks after the expiration of the deadline only.
3. All declarations made in this context shall be made in writing.
4. Any services already rendered shall, if applicable, be billed pursuant to these Terms and Conditions, in particular based on § 7. Any damage compensation claims shall be subject to the provisions of § 12.

## § 4 Rendering of Services

1. The principal shall stipulate the assignment. The fulfilment of the assignment shall be jointly planned based on these stipulations. proventis shall have the option to provide a respective written concept.
2. Even if services are rendered on the premises of the principal, only proventis shall have the right to instruct its staff. The employees shall not be integrated into the operation of the principal. The principal shall be permitted to give stipulations to the project coordinator of proventis only, not directly to the individual employees.
3. The principal shall assume the risk for the fulfilment of principal's expectations and needs by the services commissioned. In the event of doubt, the principal shall obtain advice from the employees of proventis or expert third parties in a timely manner.
4. proventis shall have the option to keep minutes of any conversations regarding the specification or modification of contractual facts, in particular of the object of the contract. The principal shall verify such notes in due time and shall notify proventis of any required changes or additions.
5. Employees shall be assigned at the discretion of proventis, and proventis reserves the right to replace employees at any time. It shall also have the right to assign freelancers and companies within the scope of the fulfilment of the order; it shall assume the same liability for such assignees as it does for its own responsibilities.
6. In the event that services cannot be rendered for reasons beyond the control of proventis, the agreed upon work times shall be billed nonetheless, unless the principal proves that the respective employees of proventis were assigned to other jobs.

## § 5 Participation of the Principal

1. The principal shall provide the work environment for the software (e.g. hardware and operating system) if the services are related to proventis software products and shall do so in compliance with the instructions issued by proventis. The principal shall in particular adhere to the respective stipulations in the manual.
2. The principal shall, at no cost to proventis, participate in the fulfilment of the order as needed by providing for instance employees, work space, hard and software, data and

telecommunications facilities. The principal shall grant proventis direct and remote data transmission access to hardware and software. The principal shall respond to queries, check the results and shall test the software immediately.

3. The principal shall assign a contact for proventis in writing, along with an address and e-mail address at which the contact can definitely be reached. This contact shall be in a position to make all necessary decisions or to ensure that they are made promptly. The contact shall ensure the productive cooperation with the proventis contacts. Principal's employees who are required to participate shall be relieved from other work to the extent appropriate.
4. The principal shall be responsible for data backup in compliance with the state-of-the-art. Unless an express written notification is received, employees of proventis shall always be in a position to assume that all data they come into contact with is adequately backed up.
5. The principal shall take adequate precautions for the possibility that the software does not work properly or works only partially (e.g. through data back-up, incident diagnosis, periodic verification of results). It shall be the principal's responsibility to ensure the proper operation of the required work environment of the software (ref. Article 1), and if necessary ensure this through third party maintenance contracts.
6. The principal shall absorb any disadvantages and additional costs resulting from the breach of said duties.

#### § 6 Service Time

1. Target dates shall be non-binding, unless proventis expressly designates them as binding in writing. In the case of labour contracts, the obligation of proventis to realize a project shall not begin until the concept has been accepted by the principal.
2. In the event that proventis is waiting for the participation of or information from the principal, or if strike, lockouts, government agency interventions or other circumstances beyond the control of proventis prevent the execution of the order, the deadlines shall be deemed extended by the duration of the encumbrance and by a reasonable start-up time after the end of the encumbrance. proventis shall notify the principal of any such encumbrances.
3. Notices and the setting of deadlines shall in particular be governed by § 3.

#### § 7 Remuneration and Terms of Remuneration

1. Unless otherwise agreed upon, proventis shall receive remuneration based on expenses in the form of daily rates based on its applicable price and terms lists. A day rate shall cover the work performed in eight hours per day. Any longer or shorter total daily work times shall be compensated on a pro-rated basis.
2. All prices shall be subject to applicable sales tax, unless the sales are not subject to sales tax. proventis shall have the right to bill for partial services rendered. Invoices shall be due upon issuance and shall not be subject to cash discounts.
3. Billing based on expenses shall be corroborated by the standard service records used by proventis. The principal shall have the option to dispute any stipulations therein within two weeks and in writing only.
4. Travel times, travel expenses and the costs of stays on location shall be billed based on the work domicile of the respective proventis employee. Travel times and costs shall be incurred on trips between the employees work domicile and the respective assignment location of the principal or between various assignment locations of the principal.
5. proventis shall have the option to demand down payments or full advance payments from principals it does not have an established business relationship yet, if delivery is to be made to a destination abroad or if the principal is domiciled abroad or if there are any reasons to

doubt that payment will be made by the principal in a timely manner. In the event that the creditworthiness of the principal should give rise to misgivings after the execution of the contract, proventis shall have the right to revoke any granted payment terms and to make the payment due immediately.

6. The principal shall be permitted to set off receivables that have been declared finally enforceable by a court of law or that are not in dispute only. The provision of § 354 a HGB (German Trade Law) notwithstanding, the principal shall not have the right to assign receivables to third parties.
7. proventis shall retain the title and rights (§ 9) to the contractual objects until its receivables under the contract have been settled in full. In the event of third party access to title retained items, the principal shall immediately notify proventis in writing and shall advise the third party as to the rights of proventis.

#### § 8 Change-Request-Procedure

1. During the term of an individual contract, both contracting parties shall have the right to demand written modifications, in particular to the agreed upon services, methods and deadlines, at any time.
2. In the event that a change request is made by the principal, proventis shall notify the former within ten business days as to whether the modification is possible and what the impact on the contract will be, in particular taking into account the time sequence and remuneration. The principal shall subsequently be required to notify proventis in writing as to whether principal intends to implement the changes under said conditions or whether principal intends to continue the contract under the previous conditions and shall do so within five business days. In the event that the verification of a change request results in expenditures that are not insignificant, proventis shall have the right to bill the expenses resulting from said verification separately.
3. In the event of a change request by proventis, the principal shall notify the former in writing within 10 working days as to whether principal consents to the change.
4. Until a mutual agreement on the change has been reached, the work shall continue on the basis of the existing contract. In lieu of same, the principal may, pursuant to the provisions of § 3, demand that the work is suspended completely or partially or finally. Financially, the principal shall treat *proventis* as if the contract were performed.

#### § 9 Rights

All rights to the work product, in particular to copyrights, invention rights and technical protection licensing rights, shall be exclusively those of proventis in its relationship with the principal, even if such work product is the result of stipulations or participation of the principal. The principal shall have a simple licensing right for the work product for principal's own purposes, unless otherwise agreed upon in writing. As far as modifications and additions to standard software of proventis are concerned, principal shall have the same rights to same as he does to the standard software.

#### § 10 Acceptance of Labour Contract Services

1. In the event that a labour contract consists of multiple individual works that can be independently utilized by the principal, these individual works shall be accepted separately.
2. In the event that a labour contract defines partial works, proventis shall have the right to present the partial works for acceptance. During later acceptances it shall only be verified whether the earlier accepted parts interact correctly with the new parts.
3. In the event that the contract includes the compilation of a concept, in particular for the parameters, modification or expansion of standard software, proventis shall have the right to demand separate acceptance for the concept.
4. The principal shall be required to verify the service result within 15 business days and to have its contact either declare the acceptance in writing, or to provide, also in

writing, information on the deficiencies found with detailed descriptions. In the event that no declaration is made within said period of time or if the service is utilized without a claim being filed, the service shall be deemed accepted. Insignificant deficiencies shall not be grounds for refusing acceptance.

5. proventis shall eliminate any deficiencies claimed pursuant to Article 4 in a time period adequate for the severity of the deficiencies. Upon notice of deficiency elimination, the principal shall verify the service results within five business days. Article 4 shall apply accordingly.

#### § 11 Warranties

1. proventis shall warrant that the service has the expressly agreed upon quality characteristics, or, if no quality has been agreed upon, that it is suitable for the contractually assumed or otherwise the standard use and that it has the characteristics that are standard for deliveries and services of this kind and that a buyer of such deliveries and services can expect; and that the transfer of the agreed upon privileges to the principal (§ 9) is not encumbered by third party rights.
2. The principal shall notify proventis of any deficiencies incurred immediately in writing, along with a detailed description of the problem and information that can be helpful in eliminating the error (obligation to file claims pursuant to § 377 HGB). Only the contact (§ 5 Article 3) shall be authorized to file claims.
3. proventis shall have the option to provide warranties primarily through remedial action. The provisions of these General Terms and Conditions, in particular § 5, shall apply accordingly. The urgency of error elimination shall be based on the degree of operational problems. The right to remedy shall also apply to service contracts.
4. In the event that the remedial action ultimately fails, the principal shall have the right to reduce the remuneration, rescind from the contract or terminate the permanent debtor relationship without notice, all subject to applicable laws and to the provisions of § 3. The compensation for damages and expenses shall be subject to § 12. All other warranty rights shall be excluded. The statute of limitations for said legal remedies shall be one year as of the beginning of the statutory warranty term (§ 438 Article 2 BGB (German Civil Code)).
5. The burden of proof as to whether the usage limitations or deficiencies were not (also) caused by improper operation, manipulation by the principal or the system environment, shall remain with the principal. Services rendered by proventis without having the obligation to do so shall be billed pursuant to § 7.
6. In the event that a third party should allege entitlements that are in conflict with the enforcement of the contractually granting licensing right, the principal shall be required to notify proventis in writing and comprehensive detail immediately. The principal herewith authorizes proventis to handle any in- and out-of-court disputes with the third party single-handedly. In the event that proventis should utilize this authorization, which shall be at its sole discretion, the principal shall not be permitted to accept the entitlements of the third party without proventis' consent and proventis shall undertake to defend such claims at its own expense and to indemnify the principal against any and all costs related to the defence and against all related damages, unless same are not based on duty breaching conduct of the principal. In lieu of the aforementioned, proventis shall have the right to fulfil the demands of the third party or to replace the attacked objects with other contractual objects. Incidentally, the statutory provisions for legal deficiencies shall apply with a warranty period of one year. Sentence 1 to 3 shall apply regardless of whether the statute of limitations has been exceeded. The warranty period of one year is not valid for liability in the event of a loss of life, bodily injury, health impairment or in cases of debt; in these cases, the statutory period is valid.

#### § 12 Liability

1. In all cases of contractual and extra-contractual liability, proventis shall pay damage compensation or reimburse expenditures made in vain only as follows:
  - a) In the event of intent the full amount; in the event of gross neglect or in the absence of a characteristic proventis has warranted only in the amount of any foreseeable damage that should have been prevented by the breached duty or warranty;
  - b) In other cases: only based on the breach of a cardinal duty if same puts the purpose of the contract at risk, however, always limited to the amount of the contract value;
  - c) Moreover: if proventis has insurance coverage for the damages incurred, within the scope of insurance coverage and deferred by the time of payment of the insurance settlement.
2. This shall be without prejudice to the objection of shared responsibility (e.g. based on § 5). The liability limits pursuant to Article 1 shall not apply to the liability for personal injury and for liability based on the Product Liability Act.
3. All claims filed against proventis for damage compensation or reimbursement of expenditures incurred in vain based on contractual and extra-contractual liability shall be subject to a statute of limitations of one year, with the exception of those based on intent or personal injury. The statute of limitations shall begin at the time stipulated in § 199 Article 2 BGB. It shall begin no later than upon expiration of the maximum time periods provided § 199 Article 3 and 4 BGB. Any deviating statute of limitations for claims based on material or legal deficiencies (§ 11 Article 4,6) shall not be subject to the provisions of this paragraph.

#### § 13 Confidentiality and Data Protection

1. The parties shall undertake to keep confidential all information about confidential issues and business secrets of the other party obtained within the scope of order fulfilment for an indefinite period of time and to utilize same only in conjunction with the fulfilment of the order. The business secrets of proventis shall also comprise the software and the services rendered pursuant to these Terms and Conditions.
2. The principal shall make available contractual objects to employees and other third parties only to the extent necessary for the execution of the awarded utilization authorization and shall otherwise keep all contractual objects confidential. The principal shall instruct all individuals granted access to the contractual objects as to the rights of proventis in the contractual objects and their confidentiality obligations in writing and shall commit said individuals to the compliance with these confidentiality obligations in writing.
3. The principal shall store the contractual objects – in particular any provided source programmes and documentations – with diligence to avert any misuse.
4. proventis complies with the provisions of the Data Protection Act. To the extent that proventis is granted access to hardware and software of the principal (e.g. for remote maintenance), this shall not be a basis for the commercial processing or use of personal data by proventis. A transfer of personal data shall only occur in exceptional cases as an ancillary consequence of the contractual services rendered by proventis. proventis shall handle such personal data in compliance with the BDSG (German Data Protection Act) and other applicable data protection acts.

#### § 14 Final Provisions

1. For any contract modifications or additions to be effective, they shall be made in writing. This shall also apply to the waiver of the written form requirement. Verbal ancillary agreements have not been made.
2. The sole place of jurisdiction for any litigation arising from the contract shall be Berlin, Germany, provided the principal is a commercial agent, a legal entity under public law or a public law based special entity.
3. The governing law shall be German law under exclusion of the UN Convention on the International Sale of Goods (CISG).