

**General Terms  
and Conditions of  
blu BEYOND GmbH  
for the development  
of individual software  
(as of 12/2021)**



## 1. Scope

- 1.1 The following General Terms and Conditions (hereinafter referred to as „GTC“) shall govern any and all contracts relating to the provision of services in the field of the development of individual software (hereinafter altogether referred to as the „Services“) concluded between blu BEYOND GmbH, Keltenring 11, 82041 Oberhaching, Local court of Munich, HRB 192604 (hereinafter referred to as „blu BEYOND“), and the Customer.
- 1.2 The provision of the Services by blu BEYOND shall be carried out exclusively under the application of these GTC. The application of any terms and conditions of the Customer which contradict or deviate from these GTC is excluded.
- 1.3 These GTC shall not apply to the provision of other IT and consulting services; rather, separate terms and conditions of blu BEYOND shall apply to such services.
- 1.4 The offer of the Services through blu BEYOND is addressed exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch, hereinafter referred to as „BGB“).

## 2. Conclusion of contract

- 2.1 The offers made by blu BEYOND regarding the provision of the Services are non-binding. Such offers do not constitute a binding offer to conclude a contract, but merely a request for the submission of an order by the Customer in accordance with blu BEYOND's offer.
- 2.2 With its order, the Customer makes a binding offer to conclude a contract.
- 2.3 A contract shall only be concluded (hereinafter the „Contract“) if blu BEYOND accepts the Customer's order by issuing an order confirmation or at the latest when blu BEYOND commences with the performance of the Services.
- 2.4 Text form is sufficient for all declarations of the Parties referred to in this Section 2.

## 3. blu BEYOND's performance obligations

- 3.1 The Services relate the development of the individual software specified in the Contract (hereinafter the „Contract Software“). blu BEYOND shall provide the Services in accordance with these GTC and the further project-specific stipulations made by the Parties in the Contract, in particular with regard to the type and functional scope of the Contract Software.

- 3.2 The Contract may also contain further stipulations regarding the procedure model and programming languages to be used as well as the project plan including the communication of the Parties in the project, e.g. regarding the contact persons, escalation processes and usual business hours within which blu BEYOND shall be available to the Customer to a reasonable extent for the purpose of coordinating the content and organization of the project.
- 3.3 Unless otherwise agreed in the Contract, blu BEYOND will continuously test all developed components of the Contract Software already during the development phase and submit the same to the Customer for release at the agreed intervals.
- 3.4 blu BEYOND shall deliver to the Customer the Contract Software consisting of the program code and the source code as well as, if agreed in the Contract, user documentation and/or developer documentation. User documentation shall describe the essential functions of the Contract Software for an average user. Developer documentation shall describe the source code of the Contract Software in a manner that is comprehensible to a software developer with average experience in order to enable familiarization for the purpose of professional troubleshooting, maintenance and further development.
- 3.5 In general, blu BEYOND shall be free to choose the place of performance. As a rule, the services shall be provided at blu BEYOND's business premises. Insofar as the provision of the Services should in individual cases require the presence of blu BEYOND's employees or subcontractors at a specific location, blu BEYOND shall - insofar as possible in the ordinary course of business and after prior agreement of dates by the Parties - provide the Services at such location agreed with the Customer.
- 3.6 blu BEYOND shall be entitled at any time to have the Services rendered in whole or in part by subcontractors. In this case, blu BEYOND shall remain responsible for the performance of the services in relation to the Customer.

#### 4. Terms of use / Cooperation obligations of the Customer

- 4.1 The Customer may use the Services for its own purposes in accordance with the Contract.
- 4.2 Any unlawful use of the Services, in particular such use that violates legal prohibitions in the Federal Republic of Germany or at the Customer's place of business and/or the rights of third parties, is prohibited.

- 4.3 The Customer shall cooperate to a reasonable and necessary extent in order to enable blu BEYOND to provide the Services. In particular, the Customer shall
- a) inform blu BEYOND comprehensively and accurately about all project-relevant IT systems used by the Customer;
  - b) grant blu BEYOND's employees and subcontractors access to the Customer's premises and IT systems as required and provide necessary technical equipment (e.g. power supply, internet access, etc.) for on-site appointments at the Customer's premises;
  - c) provide blu BEYOND upon request with specific feedback during the development of the Contract Software and grant the required approvals, in particular with regard to the draft interim versions of the Contract Software or its individual components submitted by blu BEYOND;
  - d) keep blu BEYOND proactively informed during the Contract period about any periods of significant unavailability (e.g. illness, holiday absences) of the Customer's contact persons nominated by the Customer for the purpose of coordination in the project, and nominate their substitutes;
  - e) regarding the operation of the relevant IT systems used by the Customer, in particular computer programs, interfaces and data sources, meet the system requirements specified by blu BEYOND for the intended use of the Services.
- 4.4 If the Customer does not provide the agreed cooperation on time or properly, any delivery and service dates agreed in the Contract shall be extended accordingly. Further claims of blu BEYOND due to improperly performed cooperation obligations of the Customer shall remain unaffected.

## 5. Acceptance

- 5.1 The Customer shall accept the Contract Software if blu BEYOND has provided it in full for acceptance testing and if it is free of material defects and defects of title, in particular if it meets the acceptance criteria agreed in the Contract. Insignificant defects shall not entitle the Customer to refuse acceptance. Defects identified during the acceptance test shall be documented by the Parties.
- 5.2 The Customer may declare acceptance expressly or by conclusive action. The Contract Software shall also be deemed to have been accepted in particular if the Customer
- a) uses the Contract Software productively or with real data, unless such use is solely for the purpose of acceptance testing; or
  - b) does not, within two weeks after complete provision of the Contract Software for acceptance testing by blu BEYOND, refuse acceptance due to not only insignificant defects or declare justified objections against the acceptability of the Contract Software.

## 6. Charges / Payments on account / Expenses

- 6.1 The charges and payments on account to be paid by the Customer are specified in the Contract.
- 6.2 The Customer shall furthermore be obliged to reimburse blu BEYOND for any expenses incurred in connection with the provision of the Services. This includes, in particular, in the case of on-site appointments at the Customer's premises or those of third parties, travel expenses of the employee or subcontractor deployed by blu BEYOND in each case (e.g. costs of travel to and from the location, overnight accommodation, other expenses).
- 6.3 All charges, payments on account and expenses shall be in Euro plus any applicable statutory value added tax. Any taxes, levies, duties and similar charges incurred outside the Federal Republic of Germany in connection with the Services shall be borne by the Customer. This also applies in particular to the value added tax to be borne by the service recipient in accordance with the provisions of the EU VAT system directive in its EU member state (reverse charge procedure).
- 6.4 All invoices shall be paid within 14 days after receipt by the Customer. The crediting of the invoiced amount to the account of blu BEYOND specified in the invoice shall be decisive for the observance of the payment period.
- 6.5 The Customer may only set off payment claims asserted by blu BEYOND against counterclaims which are undisputed or have become res judicata. The same applies to any rights of retention asserted by the Customer.

## 7. Contract term / Termination

- 7.1 The Contract is concluded for an indefinite period. It ends with the acceptance in accordance with Section 5 of these GTC; post-contractual claims for liability for defects in accordance with Section 9 of these GTC remain unaffected.
- 7.2 The statutory law right to early termination of the Contract or to extraordinary termination for good cause shall remain unaffected.
- 7.3 Any termination must be made in text form in order to be valid.

## 8. Granting of rights of use / IP rights of third parties

- 8.1 Upon acceptance and payment of all charges in full, blu BEYOND grants the Customer the exclusive, sublicensable and transferable right of use to the Contract Software, unlimited in terms of space, time and content.

- 8.2 Insofar as blu BEYOND also provides the Customer with other preexisting software of blu BEYOND specified in the Contract for use as part of the Services, blu BEYOND shall grant the Customer a non-exclusive right of use to this software, unlimited in terms of time and place, without disclosing the source code to the Customer. This right of use is neither sublicensable nor transferable. The Customer shall not be granted any further rights of use to such pre-existing software. Likewise, the Customer shall not be granted any editing rights to the pre-existing software, unless such rights are mandatory by law.
- 8.3 The Contract Software may contain open source software. Any rights of use to such open source software is not granted by blu BEYOND, but rather exclusively to the extent and subject to the conditions stipulated by the licensors of such open source software in the applicable license terms (hereinafter the „Open Source License Terms“). blu BEYOND hereby expressly points to the applicability of these Open Source Licence Terms, which shall be made known to the Customer at the latest within the scope of the provision for acceptance testing. The Customer also undertakes vis-à-vis blu BEYOND to comply with the Open Source Licence Terms within the scope of the use of the Contract Software.
- 8.4 If, in respect of the rights of use referred to in Sections 8.1 and 8.2 above, a violation of third-party intellectual property rights is asserted or threatened to be asserted, blu BEYOND shall be entitled, at its own discretion and expense, to secure the Customer’s right of continued use or to modify the Contract Software or the relevant pre-existing software in order to prevent infringements of intellectual property rights. Any claims of the Customer are excluded if and to the extent that the infringement of rights relates to an unauthorized modification of the Software or the relevant pre-existing software or their other use by the Customer in breach of this Contract.

## 9. Defects of quality and title

- 9.1 blu BEYOND warrants that the Contract Software is free of material defects and defects of title at the time of transfer of risk.
- 9.2 With regard to any defects in the Contract Software, the statutory provisions of Sections 634 et seq. BGB apply; Section 10 of these GTC shall also apply in this case.
- 9.3 blu BEYOND shall remedy defects in the Contract Software immediately at its own expense. The defect may also be remedied by providing a software update if the update remedies the defect and is itself free of defects.
- 9.4 Customer’s claims for liability for defects shall become statute-barred one year after acceptance of the Contract Software.

## 10. Liability

- 10.1 Any liability of blu BEYOND for damages and/or reimbursement of expenses arising from or in connection with the Contract shall be subject to the following limitations:
- a) In the event of intent or gross negligence, assumption of a quality and/or durability guarantee or fraudulent concealment of a defect, blu BEYOND shall be liable in accordance with the statutory provisions.
  - b) In the event of slight negligence, blu BEYOND shall be liable without limitation in the event of injury to life, limb or health. In all other respects, blu BEYOND shall only be liable in the event of slight negligence if a cardinal obligation is breached and only for the foreseeable damage typical for this kind of contract. A cardinal obligation means an essential contractual obligation, the fulfilment of which is a precondition for the proper performance of the contract and upon which the Customer may regularly rely.
  - c) The liability for the foreseeable damage typical for this kind of contract to be compensated in the event of a breach of a cardinal obligation pursuant to lit. b) is limited to EUR 100,000.00 per damaging event and to EUR 500,000.00 for all damaging events occurring within one contract year.
- 10.2 Any liability pursuant to the provisions of the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.

## 11. Limitations to performance obligations: Force Majeure / Reservation as to availability of supplies

- 11.1 Neither Party shall be liable for the fulfilment of its obligations if such fulfilment is prevented by force majeure. This includes in particular events which are unforeseeable, irresistible and beyond the Parties' control, particularly including severe weather, flood, landslide, earthquake, storm, lightning, fire, epidemics, pandemics, acts of terrorism, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labour unrest, sabotage, interruptions of energy supply, expropriation by governmental authorities.
- 11.2 blu BEYOND's obligation to perform is also subject to the proper and timely availability of supplies with products or advance performances provided by the suppliers of blu BEYOND. However, this shall be subject to blu BEYOND having concluded with due care a congruent covering transaction with the respective supplier and the improper or untimely supply not being attributable to a fault of blu BEYOND. Products or advance performances in the sense of sentence 1 shall in particular include supplies of hardware or software or other technical services from third parties (e.g. electricity supplies) procured by blu BEYOND.

## 12. Data protection

- 12.1 The Parties undertake to process any personal data transferred to them by the respective other Party in the context of establishing and implementing the contractual relationship in accordance with the applicable legal provisions, in particular the provisions of the EU General Data Protection Regulation (GDPR) and the Federal Data Protection Act (Bundesdatenschutzgesetz).
- 12.2 Insofar as the Services include data processing pursuant to Art. 28 GDPR, the Parties shall conclude a data processing agreement which shall also be subject to the provisions of these GTC. blu BEYOND shall be entitled to demand reasonable remuneration from the Customer for the conclusion and performance of such data processing agreement.

## 13. Confidentiality

- 13.1 The Parties undertake to treat all confidential information of the other Party that the receiving Party becomes aware of in connection with the Contract as strictly confidential and not to disclose such information to any third party for an unlimited period.
- 13.2 „Confidential Information“ shall mean all information and documents of the respective other Party which are marked as confidential or which are to be regarded as confidential under the circumstances, in particular business secrets within the meaning of Section 2 No. 1 of the German Trade Secrets Protection Act (Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG), information on operational processes, business relations and know-how as well as all work results.
- 13.3 Excluded from the obligation under Section 13.1 above is such confidential information
- a) which was demonstrably already known to the recipient at the time the Contract was concluded or subsequently become known to it from a third party, without this violating a confidentiality agreement, statutory regulations or official orders;
  - b) which is public knowledge at the time of the conclusion of the Contract or is made public thereafter, unless this is due to a breach of the Contract; or
  - c) which must be disclosed due to legal obligations or by order of a court or public authority. To the extent permissible and possible, the recipient obliged to disclose shall inform the other Party in advance and give it the opportunity to oppose the disclosure.



13.4 The Parties will only grant access to confidential information to consultants who are subject to professional secrecy or to whom obligations corresponding to the confidentiality obligations of these GTC have previously been imposed. Furthermore, the Parties will only disclose the Confidential Information to those employees who need to know it for the performance of this Contract and will also impose confidentiality obligations on these employees for the time after their departure from the respective Party's company to the extent permitted by employment law.

## 14. Final provisions

- 14.1 blu BEYOND shall be entitled to unilaterally amend these GTC - insofar as they are included in the Contract with the Customer - if this appears expedient or necessary in order to adapt to a change in the statutory situation, supreme court rulings or other market conditions, in particular technical framework conditions, and if the amendment preserves the equivalence ratio of performance and consideration.
- 14.2 The Customer may only assign or transfer claims, rights or obligations arising out of the Contract to a third party after prior consent of blu BEYOND in text form. Section 354a of the German Commercial Code (Handelsgesetzbuch) remains unaffected.
- 14.3 If any provision of these GTC is invalid, the remaining provisions shall remain unaffected. The invalid provision shall be replaced by the applicable statutory provisions.
- 14.4 The laws of the Federal Republic of Germany shall govern the Contract between blu BEYOND and the Customer, excluding the provisions of jurisdiction and the UN Convention on Contracts for the International Sale of Goods (CISG). German law shall also apply to non-contractual claims in connection with the Contract. Mandatory conflict of laws provisions remain unaffected.
- 14.5 In business transactions with merchants, legal entities under public law, special funds under public law or customers with registered offices outside the Federal Republic of Germany, Munich shall be the place of jurisdiction for all legal disputes arising out of or in connection with the Contract. A potential exclusive place of jurisdiction shall remain unaffected.