

# General Terms and Conditions for Services of the Companies of the Capgemini Group in Germany

## § 1 Scope of application and conclusion of contracts

1. These General Terms and Conditions for Services shall apply to the provision of services by the companies of the Capgemini Group in Germany, in particular Capgemini Deutschland GmbH, Capgemini Outsourcing Services GmbH and Sogeti Deutschland GmbH.

2. For the purpose of these General Terms and Conditions for Services the contracting parties are referred to individually as "Capgemini" and the "Customer" and jointly as the "Parties".

3. Unless otherwise agreed in writing, Capgemini provides services exclusively on the basis of the relevant offer or contract (hereinafter referred to as: "individual contract") in connection with the present General Terms and Conditions for Services. The Customer's general terms and conditions shall not apply, even if the Customer refers to them in a standard order form or otherwise in connection with an order and even if Capgemini has not objected to them explicitly. In the event of differences between these General Terms and Conditions for Services and the individual contract and when the individual contract contains more detailed provisions than these General Terms and Conditions for Services, the relevant terms of the individual contract shall prevail.

## § 2 Scope and execution of services

1. Capgemini provides the services specified in the individual contract for the remuneration agreed upon in the individual contract based on the assumptions and prerequisites defined therein. The scope of services is described in the relevant binding specifications. For the provision of services, Capgemini uses its own staff or staff of the worldwide Capgemini Group. Companies of the Capgemini Group and their employees are not regarded as subcontractors.

2. In addition, Capgemini is entitled to engage subcontractors with the provision of services, without being obliged to obtain the Customer's consent.

3. Any periods and deadlines for services are only binding, when specified as binding in the individual contract.

4. When the Customer notifies Capgemini in writing of any change or supplementation requests regarding the contractually agreed services, Capgemini will review them for their feasibility, required time and resulting additional costs, if any. The expenses for this review are to be paid by the Customer in accordance with the daily rates agreed in the individual contract. Any change in the originally agreed services (change request) requires a written agreement. Until an agreement has been achieved regarding the change request, Capgemini is entitled and obliged to render the originally agreed services.

## § 3 Duties of the customer

1. Duties to cooperate

The Customer assumes the material contractual duty to support Capgemini to the best possible extent in the provision of services. For this purpose, the Customer shall provide, at no cost and in a timely manner, all resources, information and documents necessary for the successful provision of the services as well as adequate infrastructure, including office rooms, IT and communication equipment at no cost. In addition, the Customer is obliged to fulfil all duties to cooperate specified in the individual contract in a timely manner and as agreed.

If the Customer fails to fulfil its duties to cooperate as agreed or in a timely manner, and deadlines defined in applicable schedules cannot be met as a result, the relevant agreements on deadlines shall no longer be valid. In this case, the parties are obliged to agree upon new deadlines for the provision of services taking Capgemini's resources planning into account. The Customer is obliged to reimburse any additional expenses incurred by Capgemini due to a violation by Customer of its duties to cooperate. Capgemini shall notify the Customer in writing and by specifying a reasonable period for fulfilling or mitigating its failure to cooperate. If this period passes without substantial fulfilment by Customer, Capgemini is entitled to terminate the individual contract immediately upon written notice.

The above-mentioned provisions shall apply without prejudice to any other rights available.

2. Third-party products

The provision of products of third parties (in particular of hardware and software) is, as a general principle, the responsibility of the Customer, unless otherwise agreed explicitly in writing. When the service to be provided by Capgemini requires the availability or purchase of third-party products, their procurement is the responsibility of the Customer and a prerequisite for the proper provision of services by Capgemini. Affiliated companies of Capgemini may be the provider of third-party products. Capgemini does not assume any warranty or guarantee for third-party products. Capgemini, its affiliated companies and subcontractors are entitled to accept and receive benefits in connection with the delivery of third-party products, e.g. discounts, commissions and similar benefits, irrespective of whether the third-party products are sold to the Customer by Capgemini directly or indirectly or by a third party. The agreement to such benefits does not constitute a conflict of interest.

## § 4 Hand-over and acceptance of services

1. Training, consulting, support, repair and maintenance services are not subject to acceptance. They are deemed to be accepted upon provision of the services.

2. Documents (in particular concepts, specifications and presentations) are delivered to the Customer for a review of whether they are in accordance with the contract. The Customer shall notify Capgemini within 10 working days of necessary modifications. Changes in the context of justified modification requests shall be performed by Capgemini within reasonable period of at least 10 working days. Documents revised as required are then regarded upon as delivered and as provided in accordance with the contract.

3. Subject to the agreed assumptions and prerequisites the Customer shall review services subject to the law of contracts for work (*Werkvertragsrecht*) and services subject to the law of contracts for sale (*Kaufvertragsrecht*) to determine whether they are in accordance with the specifications of the contract and shall declare the acceptance of the services, unless there are more than insignificant deviations from the agreed specifications. Capgemini is entitled to request partial acceptances for any completed partial services based on the progress of work and to be present during the acceptance test performed by the Customer. Unless otherwise agreed in writing, the period for testing is three weeks from the provision of services by Capgemini. After the expiry of the testing period, the services are deemed to have been accepted, unless the Customer has notified Capgemini during the testing period in writing by specifying the defects as not in accordance with the contract to a significant extent and describing their occurrence. Upon commercial use of the service acceptance is deemed to have been given, unless the commercial use of the service is due to damage minimisation purposes on the part of the Customer.

4. For services under a contract for sale, the Customer has the immediate duty to review and notify Capgemini in writing of any deficiency.

## § 5 Remuneration

1. All prices are understood to be exclusive of, and in addition to, applicable value added tax and all other taxes and public charges imposed. Invoices are payable within 21 days from invoicing without any deductions.

2. The Customer is responsible for complying with any import or export regulations applicable to the goods or services. The Customer shall pay any customs duties, fees and other charges incurred for cross-border deliveries or services. Customer shall be obliged to handle any statutory or official procedures in connection with cross-border deliveries or services as its own responsibility, unless otherwise agreed by the parties in writing.

3. The Customer is only entitled to offset undisputed claims or claims due under a final and conclusive court order against claims of Capgemini.

4. When Capgemini delivers products to the Customer based on a written individual agreement, the risk of accidental loss shall pass to the Customer upon delivery, whereas the products remain the property of Capgemini until the full remuneration has been paid.

## § 6 Defaults in performance and warranty

1. Business, training, consulting, support, repair and maintenance services are carried out by properly qualified staff with the due care and diligence and in a workmanlike manner.

2. Where Capgemini provides services under a contract for work or services that are subject to the law of contracts for sale, Capgemini warrants that the services rendered by Capgemini are in accordance with the contractually agreed requirements. When a defect exists in the contractual service, Capgemini shall rework or re-perform the service at its option. If Capgemini twice fails to rectify the defect within a reasonable period of time, or if rectification of defects fails finally, the Customer may request a reduction of remuneration for the defective portion. Where a significant deviation from the contractually agreed specifications for a service exists, the Customer may also cancel the contract, after having sent a written warning in advance. Any further claims for defects are excluded.

3. The Customer shall make a claim to have a defect rectified immediately in writing by precisely specifying and describing the defect and its occurrence. The Customer is obliged to support Capgemini to a reasonable extent in the rectification of defects in services.

4. Claims for defects are statute barred after twelve months from delivery or acceptance of the contractual services.

5. In the event it is discovered during work in connection with a notice of defects that the Customer has no justified claim upon Capgemini for re- work or new delivery, Capgemini shall be entitled to charge expenses incurred based on time and materials at the agreed prices.

## § 7 Liability

1. Capgemini shall be fully liable for intentional or grossly negligent damage, for damage due to injury to life, body or health and for any claims under the German Product Liability Act. The relevant statutory periods of limitation shall apply.

2. In addition, Capgemini shall be liable for ordinary negligence only when a material contractual duty (*Kardinalpflicht*) has been violated. This liability is limited to the foreseeable damage typical for such contracts.

3. In addition, the liability of Capgemini is limited to the amount agreed as limitation of liability in the individual contract. The liability for consequential and indirect losses such as lost profits, business interruption damage or lost savings is excluded.

4. Capgemini is liable for the loss of data saved only when the Customer has ensured by proper data backups that this data can be restored with reasonable efforts. The amount of liability is limited to the expenses incurred for restoration of data.

5. Damage claims and expenses reimbursement claims become statute-barred after a year from provision of the last service/from acceptance.

6. If Capgemini is obliged, due to a separate written agreement, to pay a penalty or a malus as monetary compensation, these payment obligations shall be counted against the agreed limitation of liability.

7. Capgemini assumes any guarantees, representations of qualities or of properties within the meaning of sections 443 and 444 of the German Civil Code (BGB) only when they are identified explicitly in writing as "representation of quality", "representation of property", or "guarantees".

8. These liability regulations shall apply to all damage and expenses reimbursement claims, irrespective of the relevant legal reason, whether in tort or in contract and include pre-contractual claims (*vorvertragliche Ansprüche*) and secondary claims (*nebenvertragliche Ansprüche*).

### **§ 8 Right of use**

The Customer is granted an irrevocable, unlimited, non-transferable, simple right of use in the work results Capgemini created in carrying out the contractual duty to perform.

### **§ 9 Third-party property rights**

1. If a third party makes claims against the Customer because a service provided by Capgemini violates industrial property rights and/or copy- rights, the Customer is obliged to notify Capgemini thereof immediately in writing. In the event of claims made before courts, it shall be obliged to announce the dispute to Capgemini (*Streitverkündung*). The Customer and Capgemini will provide each other all necessary support to defend the claim. The Customer may choose to settle the dispute with third parties only subject to a confidentiality agreement, which prohibits the parties involved from disclosing the subject matter and the contents of the settlement to any parties not involved in the settlement. The Customer cannot claim any settlement amounts paid to third parties or comparable rights granted as damages if Capgemini has not consented to such settlement amounts or other rights granted in writing in advance.

2. If the parties agree that Capgemini shall assume the sole responsibility for the defence, Capgemini may decide solely as to whether and how a settlement is made and as to whether and how a dispute in court is initiated or terminated. The Customer is obligated to provide Capgemini with all information necessary for the proper defence and provide any other reasonable support.

3. In the event of a violation of industrial property rights and/or copyrights, Capgemini may, at its option and its own expense, grant the customer the necessary right of use in the service or design the service so that no violation of rights exists. If this is not possible under commercially reasonable conditions, Capgemini shall take the service back against reimbursement of remuneration paid by the Customer (less a usage fee). In addition, Capgemini shall indemnify the Customer for all lawyers' fees and court costs imposed with binding effect due to a violation of intellectual property rights of third parties and any finally adjudicated damage claims.

4. Capgemini shall be liable only for a violation of third-party rights within the European Union and at the place of the contractual use of the services. Capgemini shall not be liable for a violation of industrial property rights or copyrights, when this is due to a change in the services, which was not performed or authorised as a whole or in part by Capgemini. In addition, Capgemini shall not be liable for violations of industrial property rights arising from a use of the relevant services, not defined in the contract.

### **§ 10 Confidentiality and data protection**

1. The parties are obliged to treat as confidential any business and company secrets of the other party as well as information identified as confidential, which has become known in connection with the execution of the contract, and not to disclose it to third parties. Companies of the Capgemini Group and their employees as well as any consultants of the parties, who are obligated to confidentiality by their profession, are not deemed to be third parties within the meaning of this provision.

2. The parties shall observe the provisions of data protection laws applicable to the respective party. They shall only use individuals for the performance of services who have committed to maintain confidentiality in compliance with the applicable data protection law.

3. The Customer gives its consent that Capgemini may process any data of the customer necessary for business transactions in compliance with the relevant data protection provisions.

### **§ 11 Permission to use as reference, non-solicitation**

1. The Customer grants Capgemini the right to refer to the basic subject matter of the activity for the Customer as a reference in public by using the company logo of the Customer.

2. The Customer may not during the period of an individual contract or for a year thereafter entice away employees of Capgemini.

### **§ 12 Term and termination**

1. Service contracts (*Dienstverträge*) and, in particular, contracts for the provision of maintenance services are entered into for the term agreed in the individual contract. If no term has been agreed, they are entered into for an unlimited term. Service contracts without fixed term can be terminated by either party at any time with a notice period of 30 calendar days.

2. Service contracts and, in particular, contracts for the provision of maintenance services with a term agreed in an individual contract can be terminated before the end of the agreed term with a notice period of 30 calendar days only if a party breaches a material provision of the contract and, after a written reminder from the other party, fails to cure the breach within a period of not less than 30 calendar days.

3. When services are provided under a contract for work, either party is entitled, if it has sent a written warning in advance, to terminate the contract with a period of notice of 30 calendar days, if the other party breaches a material provision of the contract and fails to cure the breach within a period of not less than 30 calendar days. Section 648 of the German Civil Code (BGB) shall be excluded.

4. In the case of a termination, Capgemini remains entitled to receive remuneration for any services provided until the effective date of the termination. If Capgemini has assumed reasonable contractual obligations to third parties or made other investments with a view to the performance of the relevant individual contract and these are no longer required due to the termination made by the Customer, the Customer shall reimburse Capgemini for any unavoidable costs incurred due to such contractual obligations assumed.

5. The right to terminate for an important cause pursuant to sections 314, 648 a of the German Civil Code (BGB) shall remain unaffected.

6. Either party is also entitled to terminate a contract, if insolvency proceedings are opened on the other party or if insolvency proceedings are refused due to insufficient assets, or if the other party discontinues its business, liquidates its business outside the framework of insolvency laws or is no longer able to fulfil its payment obligations under this contract.

### **§ 13 Severability**

If a provision of the individual contract or of these Terms and Conditions of Business is or becomes invalid or contains a gap, the validity of the other provisions shall not be affected. The parties undertake to replace the invalid provision or close the gap by a provision which comes as close as possible to the commercial objective of the invalid or lacking provision.

### **§ 14 Transferability, written form**

1. Capgemini is entitled to transfer its rights and duties resulting from the individual contract at any time to any other company of the Capgemini Group. The Customer herewith agrees to such a transfer of the contractual relationship.

2. Changes in or modifications of the contractual agreements must be made in writing; this requirement is fulfilled by fax messages but not by email messages without a digital signature.

### **§ 15 Applicable law and venue**

The laws of Germany shall apply, the provisions of the UN Sales Convention being excluded. The venue for all disputes arising out of or in connection with the business relationship shall be Munich.