

General Terms and Conditions for the Provision of Services and Works for DATAGROUP Rhein-Main GmbH (hereinafter referred to as 'DATAGROUP')

Last updated: 1 April 2025

Section 1 General – Scope of application

(1) These General Terms and Conditions govern the framework conditions for contracts and orders for the provision of services and works for DATAGROUP. These works or services are, in particular, the independent provision of project services in the field of information technology and/or related areas. These General Terms and Conditions shall only apply if the Vendor is an entrepreneur (Section 14 BGB), a legal entity under public law or a special fund under public law

(2) These General Terms and Conditions of DATAGROUP apply exclusively. DATAGROUP does not recognise any general terms and conditions of the contractor that deviate from, conflict with or supplement these General Terms and Conditions unless DATAGROUP expressly agrees to their validity in writing. The performance of services or the payment of remuneration shall not be deemed to be such consent. General terms and conditions of the contractor are therefore hereby expressly rejected.

(3) By accepting the order or commencing the performance of services, the contractor recognises the exclusive validity of these General Terms and Conditions.

Section 2 Order and acceptance

(1) The specific scope of delivery and services owed, such as the service description, the time frame and type of execution as well as the remuneration, is set out in the written and legally binding order (including any attachments) placed by DATAGROUP's purchasing department. Orders in other formats shall be invalid. A scope of services deviating from the order is only binding if it is commissioned in writing by DATAGROUP's purchasing department.

(2) The place of performance shall be specified in the order or by separate agreement. In the absence of such a specification, and if the place of performance cannot be derived from the delivery address, the contractor must provide the service at the place where the respective DATAGROUP GmbH has its registered office.

(3) In addition to DATAGROUP, the recipient of the service may also be a third party designated in writing by DATAGROUP.

(4) For the fulfilment of the agreed deliveries/services, the dates and deadlines specified in the order, which are therefore binding, shall take precedence. DATAGROUP is not obliged to accept deliveries or services before the expiry of the binding delivery/service period. The contractor undertakes to comply with, plan and monitor agreed deadlines or time limits.

(5) In the event of foreseeable delays or deviations from the plan, the contractor shall be responsible for taking all measures necessary to eliminate the deviations or delays. In addition, the contractor is obliged to inform DATAGROUP immediately if a delay in providing the delivery/service is foreseeable and to inform DATAGROUP of the expected duration of the delay.

(6) Unless the parties have agreed otherwise, each delivery/service by the contractor must be documented with a corresponding proof of performance (delivery note, proof of work etc.).

(7) The delivery becomes the property of DATAGROUP on handover. A simple retention of title in favour of the contractor remains unaffected.

(8) DATAGROUP is entitled to cancel the order free of charge if it has not been confirmed as unchanged within two weeks of receipt.

Section 3 Obligations of the contractor

(1) The contractor shall carry out the order independently, completely and with the greatest possible diligence. It must carry out the order in accordance with the latest state of the art proven technology, taking into account, for example, generally recognised industry standards, process descriptions, methods or implementation practices. The contractor shall deploy qualified personnel in accordance with the order specifications.

(2) The contractor shall inform DATAGROUP immediately in writing to the best of its knowledge if it becomes apparent that the order cannot be fulfilled or cannot be fulfilled within the period specified in the order. This also applies in the event of an incorrect, incomplete or inconclusive service description or other reasons which jeopardise the fulfilment of the order. If the contractor requires further relevant information, resources or documents for the execution of the project, it must also inform DATAGROUP of this immediately in writing.

(3) In principle, the contractor shall be free to organise its own time schedule. However, it must give due priority to the tasks which it is required to complete within the scope of the order and take the interests of DATAGROUP, the Customers and end customers of DATAGROUP, to the extent it is aware of these, into account as far as possible.

(4) The contractor documents its project activities in accordance with its task in the project and provides DATAGROUP or, at DATAGROUP's request, its Customer or the end customer with this documentation (e.g. user manual, programming manual, object and source code including all development documents and comments) in written and electronic form after completion of its activities.

(5) The documentation must comply with the general guidelines and specifications of DATAGROUP and, insofar as these do not contradict DATAGROUP's specifications, those of the Customer and the end customer. The general guidelines and specifications must be communicated to the contractor in good time.

(6) DATAGROUP may require that the contractor prepares further documents that are suitable for DATAGROUP, its Customers or the end customer on the basis of the agreed conditions. The scope of this additional documentation must be defined in the order.

(7) At the request of DATAGROUP, its Customers or the end customer, the contractor shall, on the basis of the agreed conditions, instruct its personnel how to use the work results and documentation that has been produced.

(8) The contractor warrants that it has taken out liability insurance for IT operations in an appropriate amount, but not less than EUR 5 million for personal injury and property damage and EUR 3 million for financial losses, and that it will maintain this for the duration of the provision of the project services. DATAGROUP reserves the right to require confirmation of this to be provided by the contractor.

Section 4 Subcontractors

(1) Contractors are generally not permitted to transfer the obligations arising from an order, either as a whole or with regard to individual partial services, to subcontractors. If the contractor uses subcontractors, the contractor shall inform DATAGROUP in good time before the start of its work of the name and exact address of the subcontractors and specify the period during which they will work. DATAGROUP is entitled to object to the use of these subcontractors if this activity conflicts with DATAGROUP's legitimate interests. The contractor shall ensure that the subcontractors used are sufficiently qualified at all times with regard to the tasks specified in the order.

(2) All subcontractors used must be bound by the same data protection and IT security obligations as the contractor itself. Proof of these obligations must be provided to DATAGROUP on request.

(3) The contractor undertakes to ensure and document that the subcontractor contractually undertakes to comply with the provisions of the MiLoG (German Minimum Wage Act), in particular Sections 1, 2 and 20 MiLoG, the AEntG (German Posted Workers Act) and, within the scope of collective agreements, also the provisions and standards specified therein, and to include this obligation in the contractual relationship when commissioning further subcontractors.

(4) The subcontractor is a vicarious agent of the contractor. The contractor shall therefore be liable for contractual breaches of duty by the subcontractor in the same way as for its own.

Section 5 Contract for work and services

(1) If there is an order under a contract for work and services, the service must be provided in such a way that it corresponds to the contractually agreed quality. If the order states that it is based on a contract for work and services, the provisions of Section 5 of these GTC shall apply.

(2) The contractor must notify DATAGROUP in writing when the service has been completed.

(3) DATAGROUP, the Customer or DATAGROUP's end customer declares acceptance of the service in writing if the work has been performed in accordance with the contract and there are therefore no significant defects. Acceptance by the Customer or the end customer also works in favour of and against DATAGROUP.

(4) If the service is not accepted because deviations from the agreed result have been identified and DATAGROUP, the Customer or DATAGROUP's end customer still has to use the service, the contractor must be informed of this.

The contractor shall only object to premature use if such premature use unreasonably impedes the fulfilment of its obligations. Premature use shall not be deemed acceptance.

(5) If the contractual service does not meet the agreed quality, i.e. if there is a defect, DATAGROUP may require that the contractor either rectify the defect or replace the work entirely. DATAGROUP therefore initially has the choice of whether subsequent fulfilment is to take the form of rectification or replacement delivery. DATAGROUP will set the contractor a reasonable deadline for subsequent fulfilment. The contractor can only refuse subsequent fulfilment if it is demonstrably (the contractor bears the burden of proof) only possible at disproportionate cost and another type of subsequent fulfilment is possible without significant disadvantages for DATAGROUP. If DATAGROUP chooses subsequent fulfilment, the reduction of the remuneration or withdrawal from the contract are initially excluded. A rectification shall be deemed to have failed after the second unsuccessful attempt unless the nature of the item or the defect or other circumstances indicate otherwise. If subsequent fulfilment has failed or if the contractor has refused subsequent fulfilment altogether, DATAGROUP may, at its discretion, demand a reduction in payment (price reduction) or declare its withdrawal from the contract. In this case, DATAGROUP is also entitled to commission a third party to rectify the defect at the contractor's expense (substitute performance). DATAGROUP is entitled to assert claims for damages due to the defect if subsequent fulfilment has failed or the contractor has refused subsequent fulfilment. DATAGROUP's right to assert further claims for damages remains unaffected.

Section 6 Remuneration

(1) The contractor's remuneration for the services actually rendered is set out in the order. All prices indicated are subject to value added tax.

The contractor is not entitled to any compensation for its own absences or absences of the individuals it deploys that are caused by illness, holidays or other circumstances for which DATAGROUP, Customers or end customers of DATAGROUP are not responsible. Likewise, no remuneration shall be paid insofar as the contractor or the persons employed by it are unable to provide their services due to strike or lockout in the Customer or end customer's business or due to force majeure. The application of Section 616 BGB is expressly excluded.

(2) Expenses, mileage allowance, travelling time to the place of assignment and other expenses incurred by the contractor and the individual deployed by it are covered by the remuneration unless otherwise agreed.

(3) Unless otherwise agreed, invoicing shall take place on a monthly basis. The contractor shall settle accounts for each project no later than seven calendar days after the end of each calendar month or after the end of the project. For invoicing purposes, the original time sheet signed by the Customer's project manager, showing the time spent on the individual activities, must be attached to the respective invoice. Without this signed time sheet, the invoice shall be deemed not to have been issued and the agreed payment term shall not commence until the time sheet has been received. If it is not possible for the contractor to obtain a signed time sheet from the Customer's project manager (illness, availability etc.), DATAGROUP must be informed immediately and a time sheet without a signature must be submitted, subject to subsequent delivery of the signature after clarification. If invoicing is based on hourly/daily rates, the hours/days of work commenced but not completed shall be invoiced on a pro rata basis. Surcharges are not paid unless otherwise agreed.



(4) If a fixed price has been agreed in the order, the provisions of Section 6 (3) shall not apply. In this case, the contractor must submit a monthly activity report and issue the invoice after the service has been provided in accordance with the contract as recognised by the Client, or after acceptance in the case of services under a contract for work and services.

If the Customer or the end customer reserves rights in the acceptance report or in the evidence of the progress of work due to a defect for which the contractor is demonstrably responsible, or if it asserts claims against DATAGROUP arising from the performance of the work by the contractor, in particular due to a breach of duty for which the contractor is responsible, DATAGROUP is entitled to withhold the contractor's remuneration to a reasonable extent.

(5) The invoice amounts are due in EUR plus the applicable VAT and less any special transfer fees (e.g. for transfers abroad) or other charges within 30 days of receipt of a verifiable invoice and the associated documents (signed time sheet, other receipts) by DATAGROUP.

Section 7 Defects and poor performance

(1) If there is a defect in the IT services, DATAGROUP may require that the contractor rectify the defect and refuse a reasonable part of the remuneration, at least three times the costs required to rectify this defect.

(2) DATAGROUP is also entitled to withhold the contractor's remuneration to the extent that DATAGROUP's Customer reserves rights or asserts rights against DATAGROUP due to a defect or poor performance relating to the contractor's IT services.

Section 8 Copyright and rights of use

(1) The contractor warrants that the work results produced by it are free from copyright and other third-party rights that restrict or exclude the use intended by DATAGROUP or by third parties. This applies, in particular, if the order was processed using third-party software.

(2) The contractor grants DATAGROUP, its Customers and the end customer in advance and irrevocably the exclusive and transferable rights of use, unlimited in terms of time, space and content, to the work results created by the contractor for DATAGROUP.

(3) The remuneration paid in accordance with the order includes the granting of the aforementioned rights; no further payment is owed in this respect.

Section 9 Force majeure

In cases of force majeure, such as, in particular, fire damage, floods, strikes, lawful lockouts and epidemics (including epidemics and pandemics, insofar as a risk level of at least 'moderate' is defined by the Robert Koch Institute), as well as due to official measures imposed by the authorities, the contracting party affected by this shall be released from the obligation to deliver or accept for the duration and to the extent of the impact.

Section 10 Data protection, confidentiality

- (1) The contractor shall comply with the statutory provisions on data protection and maintain data secrecy.
- (2) All persons entrusted with the processing or fulfilment of an order must be bound to data secrecy. DATAGROUP must be provided with a signed confirmation document before work commences.
- (3) The contractor must keep all documents and information obtained from DATAGROUP, Customers and end customers of DATAGROUP about their respective employees, customers, products, services and all work results obtained in connection with a project confidential and must not pass them on to third parties, publish them or otherwise use them. Sentence 1 shall not apply if and insofar as (i) the contractor can prove that this information was already common knowledge without a breach of the contractor's confidentiality obligations pursuant to sentence 1 and/or (ii) the contractor is legally obliged to provide information to an authority or a court.
- (4) The materials, records, data carriers and documents provided to the contractor shall be stored in such a way that they are only accessible within the respective project to the individuals working for the contractor who are entrusted with the processing or fulfilment of an order. Unless they relate exclusively to the contractual relationship between DATAGROUP and the contractor (e.g. the respective order), the materials, records and documents must be returned to DATAGROUP or, at DATAGROUP's request, to the its Customer or the end customer after fulfilment of the order or at any time beforehand. The contractor shall not be entitled to any rights of retention to the materials, records and documents, irrespective of the legal grounds.
- (5) The contractor shall also ensure that all individuals entrusted by it with the processing or fulfilment of an order are bound to this for a period of 24 months after the order ends or, if this occurs earlier, termination of the contractor's services in accordance with the provisions of paragraphs (3) and (4). The contractor must fulfil these obligations in writing and provide DATAGROUP with evidence of them on request. At DATAGROUP's request, the contractor shall disclose the names of the relevant individuals. The contractor shall take due care to ensure that this group of individuals treats the information obtained from DATAGROUP, DATAGROUP's Customers or end customers as strictly confidential and prevents misuse. DATAGROUP must be informed immediately if there are any indications that third parties other than the aforementioned group of individuals may have gained knowledge of information in accordance with Section 10 (3) or access to records, data carriers or documents in accordance with Section 10 (4).
- (6) The contractor is not permitted to use the name and trademark (logo) 'DATAGROUP' in the context of reference advertising without the prior written consent of DATAGROUP.
- (7) For each case of culpable breach of one of the obligations under paragraphs (1) to (6), the contractor must pay DATAGROUP an appropriate contractual penalty of no more than EUR 10,000, to be determined by DATAGROUP at its reasonable discretion and, in the event of a dispute, to be reviewed by the competent court for its fairness. In the case of continuous infringements, this shall apply for each month of infringement or part thereof, whereby the contractual penalty shall be limited to a total of EUR 50,000 per calendar year. The contractual penalty shall be offset against the actual damage. DATAGROUP's right to assert further damages or other contractual or statutory claims remains unaffected.

(8) The provisions of paragraph (7) shall apply equally in the event of a breach of one of the obligations under paragraphs (1) to (6) by an individual entrusted by the contractor with the processing or fulfilment of an order.

(9) All of the above obligations under Section 10 shall continue to apply for a period of 24 months after termination of the order.

Section 11 Customer protection

(1) The contractor recognises that DATAGROUP has a legitimate interest in customer protection.

(2) The contractor shall be free to work for other clients itself or through third parties provided that this does not conflict with project-specific characteristics or contractual obligations. However, the contractor undertakes not to perform any direct or indirect, independent or dependent activities for the Customer named in the order or the end customer named therein for a period of 12 months, beginning with the termination of the respective order. The activity within the meaning of the previous sentence is the service or work that the contractor had to provide and/or provided to the respective Customer or end customer within the scope of the order for DATAGROUP.

(3) Customer protection is geographically limited to the territory of the member states of the European Union existing at the time of the order.

(4) The contractor shall contractually bind all individuals entrusted by it with the processing or fulfilment of an order, also for a period of 12 months after the end of the order or after leaving the contractor's service, in accordance with the provisions of paragraphs (2) and (3). The contractor must fulfil these obligations in writing and provide DATAGROUP with evidence of them on request. At DATAGROUP's request, the contractor shall disclose the names of the relevant individuals.

(5) For each case of culpable breach of one of the obligations under paragraphs (2) to (4), the contractor must pay DATAGROUP an appropriate contractual penalty of no more than EUR 10,000, to be determined by the Customer at its reasonable discretion and, in the event of a dispute, to be reviewed by the competent court for its fairness. In the case of continuous infringements, this applies for each month or part thereof of the infringement, whereby the contractual penalty is limited to a total of EUR 50,000 per calendar year. The contractual penalty shall be offset against the actual damage. DATAGROUP's right to assert further damages or other contractual or statutory claims remains unaffected.

(6) The provisions of paragraph (5) shall apply equally in the event of a breach of one of the obligations under paragraph (2) by an individual entrusted by the contractor with the processing or fulfilment of an order.

Section 12 Liability

The statutory provisions shall apply to the mutual liability of the parties.

Section 13 Termination of contract

(1) Notice of termination must be provided in writing.

(2) Cancellation of an order:

(a) An order can be cancelled without notice if the DATAGROUP Customer wishes to terminate the cooperation with one of the contracting parties.

(b) The contractor's ordinary right of termination shall be excluded insofar as the contractor still has to provide services after the order has been placed.

(c) The right to terminate the contract without notice for good cause remains unaffected. Such good cause shall be deemed to exist, in particular, in the event of a particularly serious breach of obligations arising from this service contract.

(d) During any training period agreed in the order, the order can be cancelled by DATAGROUP with one day's notice.

(e) An order can be cancelled by DATAGROUP without notice if the obligation to submit evidence of compliance with MiLoG has not been met in due time or if MiLoG has not been complied with.

Section 14 Applicable law, jurisdiction

(1) The contractual relationship between the parties, in particular these General Terms and Conditions and the individual orders, shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) To the extent permitted by law, the place of jurisdiction is the registered office of DATAGROUP. The same applies if the contractor does not have a general place of jurisdiction in Germany or its registered office is not known when the action is brought.