

Integralis Deutschland GmbH

Terms and Conditions of Business

1. Key provisions

1.1 Scope

These Terms and Conditions of Business apply to all transactions of, and to all services and/or products provided by Integralis Deutschland GmbH (Integralis) in Germany and other countries.

1.2 Order of precedence of contractual provisions

All contractual agreements shall apply in the following order of precedence:

- a) Customer-specific contracts
- b) Special contractual provisions
- c) These present terms and conditions
- d) Statutory provisions.

In the event of conflicting provisions, the agreements or provisions given first in the list above shall always take precedence over those given thereafter. Where no provisions exist, the provisions or agreements next down in the list in order of precedence shall apply. Integralis's Terms and Conditions of Business apply exclusively. They shall also apply to all future business relationships, even where this has not been explicitly agreed. Differing terms in confirmations, or terms and conditions of Integralis's contractual partners shall not be binding on Integralis. This also applies, when contractual partners submit or accept quotations, stating that their own terms and conditions take precedence.

1.3 Type of services and products

Integralis provides IT security services and products. The type and scope of the service provided, or products supplied, are given in the corresponding quotation, and the accompanying technical specifications. Specifications under these terms and conditions and under all other contractual documents or statements on the part of Integralis shall only be deemed to be specifications where they are expressly designated as such.

The legal provisions for

- Hardware products
- Software products
- Services/consulting
- Support and maintenance

are given hereinafter. In so far as a quotation is not subject to any special contractual provisions, these terms and conditions shall apply exclusively. Where not explicitly otherwise agreed, Integralis does not supply products or services within the scope of contracts with defined results [*Werkvertrag*], as described by Section 631 (et seq.) of the German Civil Code [BGB]. This remains valid even when, for individual services, the customer has counter-signed an acceptance protocol, time sheet, or any other form of confirmation of fulfilment or delivery.

2. Deliverables

2.1 Hardware products

For all hardware products, place of performance shall be the official registered headquarters of Integralis. The customer shall bear all transport and delivery costs, where not otherwise expressly agreed. Integralis shall not assume any procurement risk as regards suppliers. The customer shall bear the risk of transportation.

The purpose of the contract as defined under Section 434 sub-section 1 sentence 2 no. 1 of the German Civil Code is solely and exclusively that described in the specifications attached to the quotation. Any purpose that differs therefrom must be confirmed by Integralis in writing.

2.2 Software products

a) General provisions

Integralis shall supply the customer with the software described in the quotation. Integralis shall not itself program the software to be supplied, nor customise the software, unless this is specifically defined as a deliverable in the quotation. Unless expressly agreed, the customer shall not be entitled to require divulgence of the source code. The software shall only be installed if such installation is a defined element of the quotation. Unless otherwise agreed by the parties, Integralis shall not produce documentation for software, but will forward the documentation provided by the software manufacturer (vendor) to the customer.

b) Copyright, right of utilisation and exploitation

The software vendor generally holds the right of utilisation and exploitation based on copyright legislation. The transfer of these rights to third parties is generally governed by a contract with the vendor. Where not otherwise agreed between the parties, the type and scope of the transfer of such rights is solely governed by the terms of the software vendor's license. Integralis cannot guarantee that these rights on the part of the vendor exist. Any claims to any such rights must be addressed to the software vendor.

2.3 Consulting and other services

a) General provisions

Integralis provides consulting and other services in the field of IT security, and/or for installation and implementation of hardware and software supplied by Integralis. Such consulting and other services are delivered under service contracts [*Dienstvertrag*], as defined by Section 611 (et seq.) of the German Civil Code, where not otherwise expressly contractually agreed.

b) Fees for services

Fees for consulting and other services shall be calculated on a time-and-materials basis. The smallest unit of time for the calculation of fees is 0,25 hour. Times shall be rounded up to nearest unit of 0,25 hour.

In general, the parties shall agree a daily rate, or a rate for each unit of one hour. In accordance with these agreed rates, the customer may then, at his own discretion, order the volume of consulting and other services he deems appropriate. The agreed rates are binding for a maximum of one year after the contract has been concluded.

Where fixed prices have been agreed for consulting and other services, they are conditional on the IT systems environment on which Integralis has based its planning allowing the performance of such consulting and other services at the fixed price, and furthermore conditional on the customer fulfilling his duties of co-operation (section 2.5 below). Should, due to changes to the customer's IT systems environment or to failure of the customer to fulfil his duties of cooperation, it no longer be possible to provide consulting and other services at a fixed price, Integralis shall inform the customer thereof without delay. In this case, the parties shall agree a new fee. Should no agreement be reached, then the contract shall be deemed null and void. Services already delivered shall be charged on a time and materials basis, in accordance with the price lists applicable at the time.

"Agreed appointments for the performance of servicing and maintenance are binding. If appointments are postponed by the customer with a lead time of under 3 (three) working days, Integralis may charge the customer for the costs incurred as a result. These particularly include costs for the planned man

days, where it is not possible to plan the use of these elsewhere due to the short notice of the postponement."

2.4 Support and maintenance

a) General provisions

Integralis is only obliged to provide support and maintenance services, where such services have been specifically agreed between the parties. The type and scope of the support and maintenance services to be provided are defined in the quotation and corresponding specifications. Integralis is entitled, at its own discretion, to deliver support and maintenance services via third parties. Should, in this instance, a support and maintenance contract be concluded between the customer and the third-party provider, then all customer's legal rights pertaining to support and maintenance services shall be based solely on this contractual relationship, and any claims must be brought directly against the third-party provider.

b) Fees

Support and maintenance fees are fixed prices, i.e. they are not charged on a time-and-materials basis. Support and maintenance fees are, where not specifically otherwise agreed, to be paid annually in advance. Support and maintenance fees already paid cannot be reimbursed.

2.5 Duties of cooperation on the part of the customer

The customer undertakes to provide, free of charge, all the technical resources required to ensure Integralis can duly fulfil its contract obligations. In particular, without limitation, the customer must ensure that Integralis is provided with all information requested on the IT infrastructure in good time. This shall include, without limitation, providing the information on technology and on project organisation required for service delivery (e. g. without limitation, hardware and operating systems, standard software deployed, organisational plans) and, where necessary, making available the hardware and/or software (including documentation) for which the service is to be provided. Where necessary for service delivery, the customer shall grant access to his servers and systems environment for the term of the contract. Where access to external providers is required, the customer shall ensure that such providers provide written permission, granting Integralis such access. The customer hereby expressly indemnifies Integralis against all and any claims for damages, and any other claims, arising from access on the part of Integralis within the scope of service delivery, in particular, without limitation, access to external providers. The customer shall ensure that, during service delivery, properly skilled and qualified employees familiar with the customer's IT system and infrastructure are available to Integralis during normal business hours. Where Integralis submits designs, test versions of programs, or similar documents, to the customer before or during service delivery, the customer shall check these to ensure compatibility with his own IT systems, and if necessary draw Integralis's attention to existing or potential problems, such as, without limitation, software and hardware conflicts. At the customer's request, attacks on the systems environment will be simulated (e.g. attacks from hackers) within the scope of certain services. In these cases, the customer shall authorise Integralis to access the customer's IT infrastructure, in so far as is necessary for these services. Such access will generally be via an IP address authorised by the customer. Integralis hereby expressly draws attention to the risk of data being compromised or deleted in such instances. The customer shall therefore ensure that regular data backups are made, and that a backup of systems-relevant data is made before Integralis performs its services.

3. Provisions for hardware products, software products, consulting and other services, support and maintenance

3.1 Warranty

a) Hardware / software

The customer is not entitled to claim for damages due to defects in hardware or software products. This does not apply

to claims with regard to death, bodily harm, or damage to health where Integralis is responsible for violating its obligations or duties, nor does it apply to damages as a result of wilful intent or gross negligence on the part of Integralis. Any violation of obligations or duties on the part of legal representatives or vicarious agents of Integralis shall be deemed on a par with any violation on the part of Integralis. All and any other warranty claims shall only be valid if brought within one year.

Furthermore, Integralis only warrants that hardware and software, at the time of delivery, is free from defects of a type that would materially impair or entirely negate the value or fitness for generally assumed or contractually defined purpose. Integralis shall not provide any warranty in the event of improper usage, or in the event of non-observance of the manufacturer's or vendor's instructions, and/or assembly, installation and operating instructions. The warranty shall also be null and void should the customer, or any third party acting on the customer's instructions, interfere with or manipulate the hardware or software in any way.

Integralis hereby draws attention to the fact that, in accordance with the current state of the art, it is not possible to create software that is completely free from defects. Where not explicitly otherwise agreed, Integralis does not warrant that the software complies with the customer's specific requirements, or will interoperate with the customer's existing software or hardware.

The customer shall report any defects in writing and in as much detail as possible. Integralis will, at its own discretion, fulfil its obligations under warranty by rectifying defects in the products or supplying replacement products. The costs incurred in rectifying defects (in particular, transport, labour and material costs) will be borne by Integralis. Should Integralis fail to repair or replace the product, the customer shall be entitled to a reduction in fee/price, or to withdraw from the contract.

b) Consulting and other services, support and maintenance

The warranty for consulting and other services and/or support and maintenance is defined by the statutory provisions governing service contracts, i.e. Section 611 (et seq) of the German Civil Code. Integralis hereby draws attention to the potential unavailability of material parts of the systems environment (i.e., without limitation, software, hardware, and networks) while support and maintenance services are being provided.

3.2 Liability

Integralis hereby excludes liability, regardless of the legal grounds for such liability. This exclusion extends to liability on the part of Integralis's employees, representatives and vicarious agents.

This exemption shall not apply:

- Where damage is attributable to wilful intent or gross negligence.
- Where there is death, bodily harm or damage to health attributable to negligent violation of duty on the part of Integralis, or intentional or negligent violation of duty on the part of a legal representative, or vicarious agent of Integralis.
- For claims under the German Law on Product Liability [*Produkthaftungsgesetz*].

Should Integralis violate material contractual duties, compensation shall be limited to damages typically caused.

3.3 Retention of title (lien)

All hardware and software supplied shall remain the property of Integralis (lien) until all payments have been received from the customer. The customer undertakes to use products subject to lien solely within the scope of normal business activities. All and any claims and rights from the re-sale of products subject to lien are hereby assigned to Integralis in full amount, such

assignment coming into force at the time of conclusion of contract.

Should the customer fail to make payments in due time for products subject to lien, or discontinue payments, or should conciliation or bankruptcy proceedings be initiated as regards the customer's assets or company, Integralis is entitled to:

- Revoke the authorisation to sell, process, or install the products subject to lien;
- Demand the surrender of the products subject to lien;
- Inform, if necessary, third-party debtors of the assignment.

3.4 Relocation of products to a new site; relocation of products abroad

The customer is obliged to notify Integralis in writing two weeks in advance before relocating products to a new site. Integralis hereby draws attention to the fact that such relocation may mean that individual or all support services can no longer be provided. This applies in particular, without limitation, to relocation abroad.

3.5 Enticement of employees

The customer hereby undertakes not to entice Integralis employees deployed to his site or on his behalf to join his staff, i.e. to offer such employees permanent contracts of employment, or work as freelance agents, or to make any other attempts at enticement. Should the customer violate these provisions, the customer shall pay a contractual penalty to be determined by the appropriate court of law.

3.6 Data protection

Integralis hereby undertakes to comply with German data protection legislation. Where personal data is made available by the customer within the scope of the contractual relationship, the customer hereby confirms that such data has been captured, stored and made available to Integralis in compliance with applicable data protection legislation, and that, in particular, without limitation, the customer has secured all necessary declarations of consent. The customer indemnifies Integralis against all losses, damages and costs, including legal costs, attributable to a violation of data protection provisions on the part of the customer and, additionally, in so far as necessary, the costs of mounting a defence against any claims or actions brought by third parties, including, without limitation, regulatory or oversight bodies.

3.7 Confidentiality

The parties hereby undertake to maintain confidentiality regarding all and any expertise, knowledge and business information disclosed within the scope of the contractual relationship, in so far as such information is not in the public domain. Furthermore, they undertake to place their employees under the same obligation to maintain confidentiality. Such confidentiality applies, in particular, without limitation, to all information on business partners, customers, internal company matters, and technologies and processes used.

3.8 Term of contract/termination for good cause

Consulting and other services, and support and maintenance, are ongoing obligations. Where not otherwise agreed, the contract can be terminated in writing after one contractual year at the earliest, by giving notice of three months to the end of the month.

Should the contract not be terminated at the end of any such year, the contractual relationship shall be extended by a further year.

With regard to ongoing obligations, Integralis has, in accordance with German statutory provisions, the right to terminate the contract for good cause. Good cause includes,

without limitation, the initiation of bankruptcy proceedings. The provisions of Section 119 of the German Ordinance on Insolvency remain unaffected hereby. Should the customer fail to make full and timely payment or fail to fulfil his duties of cooperation, Integralis shall be entitled to withhold and/or suspend services in accordance with statutory provisions.

3.9 Payments

Where not otherwise agreed, all amounts are payable in full 14 days after receipt of invoice, with no discounts. Integralis reserves the right, at its own discretion, to provide services only once advance payment has been received. The customer may only withhold payment and within the scope of one and the same contractual relationship and only where defects have been identified, and then only in a amount equivalent to three times the expenditure required to rectify such defects. Payments due to Integralis may only be netted against claims on the part of the customer where such claims are undisputed or *res judicata*. Should the customer default on payment, Integralis' rights shall be in accordance with the statutory provisions on default of payment. However, Integralis shall be entitled, where it can demonstrate that the damages incurred are higher than the amount foreseen by statutory provisions, to demand corresponding additional compensation from the customer.

With regard to ongoing obligations, Integralis shall notify the customer of any increase in prices at least eight weeks before the increase comes into force. An increase in prices is considered accepted if the customer does not give notice to terminate the contract in writing within four weeks of the date of notification of said price increase.

4. Other provisions

All Integralis' business relationships are subject exclusively to the law of the Federal Republic of Germany. The UN Convention on the International Sale of Goods shall not apply.

Place of performance for goods and services is the registered business headquarters of Integralis. In so far as legally permissible, the sole venue for all any disputes is Munich, Germany. Integralis is entitled, at its own discretion, to bring action at the customer's venue.

5. Arbitration

The parties shall make all efforts to resolve any problems that arise within the scope of the contractual relationship amicably by negotiation.

Should the parties be unable to amicably resolve their differences within 60 days after being requested to commence negotiations, they shall initiate arbitration proceedings according to the rules of the gwmk [German Association for Business Arbitration and Conflict Management.].

The same shall apply if negotiations are not commenced within 30 days after receipt of the request to do so.

The above provisions do not prevent either party from seeking recourse through expedited court proceedings, in particular, without limitation, recourse in the form of attachment or injunction.