

General Terms and Conditions of EnBITCon GmbH

Status: 25 October 2021

1 Scope / Commitment period

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to business relations of EnBITCon GmbH, August-Bebel-Allee 6 , 53175 Bonn (hereinafter referred to as "EnBITCon") with its customers.

1.2 EnBITCon offers customers various IT services of a system house. Depending on the specifically agreed services, Special Terms and Conditions of Contract (hereinafter referred to as "GTC") shall apply in addition to these GTC. These GTC as well as the BVB are each available online at <https://www.enbitcon.de/rechtliche-informationen/agb/>. In the event of contradictions, the BVB shall take precedence over these GTC.

1.3 The content of the contract shall always be governed by the offer/order/contract documents agreed between EnBITCon and the customer (hereinafter jointly referred to as "Offer"). In the event of contradictions between the Offer (including any attachments) and the GTC / GT&C, the Offer shall take precedence. Other documents referenced in the GTC / GT&C shall apply subordinate thereto.

1.4 General Terms and Conditions / Terms and Conditions of Purchase of the customer shall not become part of the contract instead of or in addition to these GTC, unless EnBITCon expressly confirms this to the customer in writing within the scope of the conclusion of the contract; text form shall be excluded. The customer is aware that the commencement of the provision of services by EnBITCon shall under no circumstances be construed as an acceptance of the customer's General Terms and Conditions / Conditions of Purchase.

1.5 EnBITCon reserves the right to amend these GTC at any time. The customer shall be informed of the changes in writing six weeks before they come into force. Within the scope of this information, the customer shall be informed of the new GTC. He is entitled to object to the validity of the new GTC within four weeks after receipt of this notification. If the customer fails to object, the amended GTC shall become part of the contract after the expiry of the six-week period. EnBITCon shall expressly draw the customer's attention to this period within the scope of the notification of change.

1.6 Excluded from the right to amend these GTC pursuant to clause 1.5 are provisions which affect the main performance obligations of the contracting parties and which thus significantly change the relationship between main and counter-performance obligations, as well as other fundamental changes to the contractual obligations which are equivalent to the conclusion of a new contract. Such changes require an express contractual agreement.

1.7 Offers made by EnBITCon to customers who are entrepreneurs are always subject to change; only the order / commissioning by the customer shall constitute a binding offer. With respect to consumers, EnBITCon shall be bound by an offer for three (3) days from the date of submission of the offer.

1.8 EnBITCon shall use carefully selected own employees or third parties as subcontractors with the respective required qualifications to provide the services. EnBITCon shall be entitled at any time to replace its own employees or third parties used for the performance of services by such employees with comparable qualifications and experience. If these employees have been communicated to the customer by name, EnBITCon shall inform the customer about the replacement.

1.9 The agreed remuneration covers only the scope of services documented in the offer. Agreed additional services shall be charged separately on the basis of the agreed prices. The prices stated in EnBITCon's price list, which is available at <https://www.enbitcon.de/preisliste>, shall be deemed to have been agreed, unless the parties stipulate different prices in the offer. Insofar as the description of services in the offer contains unintentional gaps or ambiguities, EnBITCon shall be entitled to adjust the description of services accordingly at its reasonable discretion.

2 General obligations of the customer

2.1 The customer acknowledges its duties to cooperate (as set forth in these GTC / the respective applicable GTC) and, if applicable, additionally in the offer, as a prerequisite for the provision of services by EnBITCon and thus as its contractual obligations.

2.2 The customer shall name in writing at least one contact person for EnBITCon and an address and e-mail address at which the contact person can be reached. The contact person must be in a position to make the necessary decisions for the customer or to bring them about without delay. The contact person shall ensure good cooperation with the contact person at EnBITCon.

2.3 The customer shall inform EnBITCon without delay of any changes in its communication data and, upon EnBITCon's request, reconfirm the current accuracy within 14 days of receipt. This includes in particular name / company; managing director or board of directors, if the customer is a legal entity; address / registered office; telephone and e-mail.

2.4 If the customer does not fulfil an obligation to cooperate, does not do so properly or does so late and if EnBITCon is therefore unable to provide its services in accordance with the contract, EnBITCon shall not be liable for any disadvantages arising for the customer as a result thereof. EnBITCon shall additionally charge the customer for any additional expenses caused thereby, in particular for extended provision of the personnel or material resources employed, at the agreed prices. Other rights of EnBITCon due to omitted or insufficient cooperation of the customer shall remain unaffected.

3 Prices and terms of payment

3.1 All prices agreed in these GTC, the BVB and in our offers are net prices, to which the legally determined value added tax must be added in each case. Prices, methods and types of payment as well as times for invoicing shall be specified in the offer.

3.2 If the remuneration is calculated on the basis of "person days" or similar, such a "day" shall correspond to up to eight hours per person in the period from 08:00 to 17:00 on working days at the registered office of EnBITCon (Monday-Friday). EnBITCon shall charge per quarter of an hour commenced.

3.3 Invoices are payable within 14 days of receipt. In case of doubt, invoices shall be deemed received three working days after the invoice date. The granting of a discount is excluded. Any bank charges incurred (in particular for foreign payments) shall be borne by the customer.

3.4 EnBITCon sends invoices to the customer by e-mail. At the customer's request, invoices can be sent by post for an additional charge of EUR 1.00 per invoice.

3.5 EnBITCon may increase the monthly prices for recurring services in continuing obligations without the customer's consent by up to 10% per year at its reasonable discretion with effect for the future, but for the first time no earlier than four (4) months after the beginning of the term of the contract. The price increase for partial services is only possible if these were already agreed for at least four (4) months. The price increase shall only be made to cover increased costs. The customer shall be responsible for proving that the price increase made by EnBITCon was not made for this purpose.

3.6 If the customer is a consumer, he can terminate the current contract within two (2) weeks after receipt of the written price increase notification with a notice period of three months to the end of the month in case of a price increase according to clause 3.5. In this case, the previous fee shall be charged until the end of the contract, i.e. the increase shall not take effect. However, the customer's consent is deemed to have been given if the customer does not give notice of termination within this period. This assumes that we have pointed out the consequences to the customer with the notice of change.

3.7 If the customer is an entrepreneur, EnBITCon reserves the right to demand advance payment. This shall apply in particular in case of an order value exceeding EUR 500.00 net. EnBITCon further reserves the right to demand advance payments or securities, if circumstances occur or become known, by which

the claims appear to be at risk. If the customer does not comply with such a request within one (1) week, EnBITCon may withdraw from the contract.

3.8 If the customer is an entrepreneur, EnBITCon may charge interest in the amount of nine (9) percentage points above the respective base interest rate upon the occurrence of default. If the customer is a consumer, the default interest shall be five (5) percentage points above the respective base interest rate.

3.9 The provision of services by EnBITCon within the scope of continuing obligations shall be conditional upon the customer's timely fulfilment of its payment obligations. If the customer

3.9.1 for two consecutive months with the payment of the agreed prices or a not insignificant part of these prices or

3.9.2 in a period extending over more than two (2) months, with payment of the agreed prices in an amount equal to the prices for two (2) months,

in default, EnBITCon shall be entitled,

3.9.3 interrupt the affected partial services until the prices are paid or

3.9.4 to terminate the affected partial services without notice. In addition to the prices for the services rendered until the effective date of the termination, EnBITCon shall be entitled to a compensation fee in the amount of the agreed prices for the period from the termination until the end of the regular contract term. The customer shall be entitled to prove that EnBITCon has suffered no or less damage than the compensation fee. If such proof is furnished, only the proven damage shall be compensated. Other further rights of EnBITCon due to delay shall remain unaffected. The termination of the contract shall not release the customer from the obligation to pay for the services used until the time of termination.

3.10 Travel costs, expenses and other ancillary costs as well as out-of-pocket expenses incurred by EnBITCon for the provision of the contractually owed services shall be invoiced to the customer additionally and according to expenditure, unless otherwise stipulated in the offer. Unless otherwise agreed in individual cases, EnBITCon shall invoice for travel to customer locations at the flat rate agreed in the offer.

4 Liability

4.1 EnBITCon shall be liable without limitation for damages caused by gross negligence or wilful misconduct of EnBITCon, its legal representatives or vicarious agents. Furthermore, EnBITCon shall be liable without limitation for damages resulting from culpable injury to life, body or health.

4.2 Only in the event of a breach of essential contractual obligations, the breach of which jeopardises the purpose of the contract and the fulfilment of which the customer could particularly rely on (so-called cardinal obligations), EnBITCon shall also be liable in cases of simple negligence. This liability is limited to the compensation of damages that were typically foreseeable at the time of the conclusion of the contract.

4.3 In cases of slightly negligent liability, EnBITCon's liability for indirect damages (including, in particular, damages caused by interruption and limitation of business), loss of profit, loss of savings and damage to the image shall be excluded in any case.

4.4 Furthermore, the liability for all cases of slight negligence shall be limited to an amount of EUR 1,000,000.00 per liability case. A further limitation of liability for all cases of slight negligence shall be agreed individually in the offer, if applicable.

4.5 The above limitations of liability shall also apply in favour of EnBITCon's legal representatives and employees and shall also apply in the event of pre-contractual or tortious liability.

4.6 EnBITCon's liability for damages under the Product Liability Act shall remain unaffected.

4.7 As far as according to the offer EnBITCon is not responsible for the backup of the customer's data, in case of data loss EnBITCon's liability shall be limited to the recovery expenses which would have been incurred in case of a dutiful data backup on the part of the customer.

5 Secrecy and data protection

5.1 The parties shall keep secret all information of the other party that comes to their knowledge in the course of the cooperation and that requires secrecy, i.e. they shall protect it with due diligence against disclosure to unauthorised persons. Authorised persons in the sense of this provision are the subcontractors used in accordance with the contract as well as employees of EnBITCon. The parties undertake to involve only such employees or third parties in the cooperation whom they have previously committed to secrecy in a comparable form.

5.2 All information of a party - irrespective of its form - which is marked in writing as being subject to secrecy or whose secrecy requirement clearly results from its nature, in particular business and trade secrets, is subject to secrecy. The conditions of the offer are also subject to secrecy.

5.3 Non-classified information is information that the receiving party can demonstrate either (a) is or was in the public domain, (b) was already in the possession of the party without an obligation to maintain confidentiality, (c) was developed independently by another party without the use of classified information, or (d) lawfully acquired the information from a third party who was not under an obligation to maintain confidentiality.

5.4 EnBITCon shall comply with the customer's agreed data protection and data security requirements. Both parties shall observe the applicable data protection regulations, in particular those valid in Germany, and shall oblige their employees deployed in connection with the contract to maintain data secrecy, unless they are already under a general obligation to do so. Insofar as EnBITCon processes personal data within the scope of the provision of its services under this agreement, EnBITCon shall act exclusively on behalf of and on the instructions of the customer. The parties shall enter into a separate written agreement on commissioned processing.

5.5 The confidentiality obligations shall continue for three years beyond the end of the respective contract.

6 Term and termination

6.1 Unless otherwise stipulated in the offer, EnBITCon shall provide the agreed services within the scope of continuing obligations from the time of provision for an indefinite period of time, initially for the minimum contract term stated in the offer.

6.2 Beyond the notice periods agreed in the offer, the customer has no right of revocation or ordinary termination, in particular not during the minimum contract period.

6.3 Notwithstanding any rights to ordinary termination of services, the right of both parties to terminate for cause shall remain unaffected. If the reason for termination is a breach of a contractual obligation, the terminating party shall, prior to termination, set a reasonable period of time for the other party to remedy the reason for termination.

6.4 Cancellations must be made in writing; text form is excluded.

7 General provisions

7.1 If the customer is a company (§ 14 BGB), the following applies: The parties may use each other's companies and brands publicly (especially on the company website or in brochures) as a reference. In addition, the customer shall have the possibility to act as a reference customer for EnBITCon on the basis of a separate agreement.

7.2 The assignment of rights or obligations of the customer arising from the contract to third parties shall be excluded without the prior written consent of EnBITCon.

7.3 Offsetting by the customer is only possible with an undisputed or legally established counterclaim.

7.4 Amendments and supplements to the offer or the GTC / GT&C must be made in writing. This also applies to a cancellation or waiver of the written form requirement. The text form is excluded in these cases.

7.5 If the GTC / GTP require the written form, the text form (e.g. notifications by e-mail) shall be sufficient for compliance with the GTC / GTP, unless this is regulated differently in the individual case.

7.6 All claims of the customer against EnBITCon shall become statute-barred 24 months after their accrual, unless otherwise provided for in the GTC / GTCP.

7.7 The legal relationship between the parties shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

7.8 The exclusive place of jurisdiction shall be the registered office of EnBITCon, provided that such an agreement between the parties is legally permissible. In this case EnBITCon shall be entitled to sue the customer at the latter's place of business.