

# Bitkom's contractual terms for work and labour contracts -WV Bitkom-

(WV Bitkom, Version 2.1)

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## 1. Subject matter of the contract and service description

**1.1** The provider shall render work and labour as set forth in the conditions agreed under the contract and in the following, in exchange for the remuneration agreed contractually.

**1.2** The provider is responsible for success only insofar as

a) the criteria essential for it were specifically and definitively defined with regard to scope and effect in the service description on contract conclusion, and have become the subject matter of the contract (agreed service criteria), and

b) the customer fulfils their collaboration obligations in a timely and proper manner, unless these obligations have no effects on service rendering.

**1.3** The service description is based on technical and functional requirements of the customer announced by said customer. The service description conveys agreed service criteria (item 1.2 a), followed by any applicable test criteria. Changes to the service description shall only be performed as set forth in item 4. Any analysis, planning and consultation services forming part of the service description shall be rendered by the provider only on the basis of a separate contract.

If not yet agreed in the service description, the contractual partners shall reach an agreement by the time agreed in the contract, otherwise no later than two weeks after signing the contract, on the basis of the agreed service criteria as regards their test resources such as test cases (items 6.1 and 6.5 c).

If the test resources have not been agreed within two weeks after the deadline planned for this, the provider themselves can define appropriate test resources in a binding way. The customer's interests are to be considered adequately here.

**1.4** If the work and labour contract does not commit the provider to any success, then the document titled 'DL Bitkom' (contractual terms for services) applies, unless agreed otherwise.

## 2. Collaboration between the contractual partners

**2.1** The contact persons (item 2.1 of 'AV Bitkom') shall promptly make all decisions related to contract execution and remain available for supplying necessary information.

The decisions made by the contact persons must be documented.

**2.2** The location of service provision is the provider's headquarters, unless agreed otherwise.

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## 3. Collaboration obligations

- 3.1** The customer ensures that the documents, information and data needed for service provision are available to the provider completely, correctly, in a timely way and at no charge, unless the provider is liable for this. The provider may assume the completeness and accuracy of these documents, information and data, unless said provider recognizes or has to recognize that they are incomplete or inaccurate.
- 3.2** The customer shall transfer the test resources defined in item 1.3 in a timely and orderly manner. If the customer delays transfer, the provider is authorized to produce or acquire suitable test resources at the customer's expense.
- 3.3** The customer shall report defects, especially as set forth in item 2.4 of 'AV Bitkom'.

## 4. Procedure for changes to services

Both contractual partners can recommend changes to the service description (item 1.3) and service provision. The following procedure is agreed for this:

- 4.1** The provider shall preview the customer's recommendation for change and inform them whether or not a detailed examination of this recommendation is necessary.
- 4.2** If a detailed examination of the recommendation for change is necessary, the provider shall inform the customer in a timely manner about the expected, necessary period of time and the remuneration. The customer shall accept or reject the examination request in a timely manner.
- 4.3** If a detailed examination of the recommendation for change is not necessary or the requested examination has been completed, the provider shall either
- a) submit a written offer concerning implementation of the changes (offer for change) to the customer. The offer for change includes, in particular, changes to the service description and its effects on the service period, planned deadlines, test resources and remuneration; or
  - b) inform the customer that the recommendation for change cannot be implemented within the scope of the agreed services for the provider.
- 4.4** The customer shall either reject an offer for change within an acceptance period specified therein (commitment period) or accept it in writing or in another agreed form. The customer shall promptly notify the provider of any rejection.
- 4.5** The provider and customer can agree that services affected by a recommendation for change be interrupted until the end of the examination, or - if an offer for change is submitted - until expiry of the commitment period.

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- 4.6** Until an offer for change is accepted, work shall continue on the basis of the previous contractual agreements. The service periods are extended by the number of calendar days in which work was interrupted in connection with the recommendation for change or its examination. The provider can request a reasonable remuneration for the duration of the interruption (item 4.5), unless the provider uses their employees affected by the interruption in a different way or wilfully refrains from use.
- 4.7** On request by the provider, the change procedure is to be documented in writing or in text on one of the provider's forms, unless agreed otherwise. Any amendment to the contractual agreement, especially the service description, must be agreed in writing.
- 4.8** Items 4.2 through 4.7 apply accordingly to the provider's recommendations for change.
- 4.9** Recommendations for change must be addressed to the contractual partners' contact persons (item 2.1).

## 5. Rights of use

- 5.1** As regards the service results which the provider has supplied within the scope of the contract and transferred to the customer, the provider grants the customer a non-exclusive right to use these results in perpetuity for their own internal purposes within the contractually intended context. Transfer of rights of use to third parties is only permitted if the customer completely relinquishes these rights. The customer is obliged to impose the obligations and restrictions of use relevant to them on the third party. This especially applies to the obligations as set forth in item 5.4. On the provider's request, the customer shall confirm relinquishment of own use in writing.
- 5.2** All other rights remain with the provider.
- 5.3** The customer shall promptly inform the provider if said customer becomes aware that unauthorized access or use is impending or has occurred in their sphere. The provider is authorized to take appropriate technical measures to prevent use contrary to the contract. This must not significantly impair contractually compliant use of the services.
- 5.4** The customer must do nothing which might encourage unauthorized use. In particular, they must not attempt to decompile programs, unless the customer is authorized as set forth in section 69d German copyright law for interfaces to software not to be supplied by the provider. Before any decompilation, the customer shall first request the necessary information from the provider.
- 5.5** The provider can revoke the customer's right of use if they significantly breach the restrictions of use or other rules on preventing unauthorized use. The provider shall set a grace period of remedy for the customer beforehand.

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In case of recurrence and in special circumstances which justify immediate revocation, bearing in mind the interests of both sides, the provider can also declare revocation without setting a period of notice. After revocation, the customer shall give the provider written confirmation that use has been suspended. The provider shall restore rights of use for the customer after they have submitted and warranted in writing that there are no more breaches of these rights of use, and previous breaches as well as their consequences have been eliminated.

## 6. Acceptance

**6.1** The customer is to declare acceptance within reasonable a period set by the provider. A time limit of not more than 14 calendar days is usually considered appropriate, insofar as no other acceptance period has been agreed. The acceptance period shall be set in writing. During acceptance period, the customer can verify contractual compliance of performed work with the aid of the test resources (item 1.3), if applicable.

**6.2** Unless agreed otherwise, a defect against which an objection is raised shall be assigned to one of the following categories:

a) Category 1

Work and labour have a defect which makes use impossible or allows it only with significant limitations.

b) Category 2

Work and labour have a defect which limits use, without a defect from category 1 being present.

c) Category 3

Work and labour have a defect which restricts use only negligibly.

**6.3** The customer may refuse to declare acceptance only in case of a simultaneous complaint about a fault in category 1, or several faults in category 2 together having the same effect as a fault in category 1. The refusal of acceptance and fault complaint must be in writing.

The provider shall properly correct reported defects (item 3.3) from category 1 within a reasonable period of time such that there are no longer any category 1 effects. As long as a test cannot be conducted properly due to this type of defect, its effects or corrective measures being taken for it, the acceptance period is extended accordingly for the concerned work and labour. Claims due to defects after declaration of acceptance remain unaffected.

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- 6.4** Partial acceptances already declared remain unaffected by later acceptance tests for other services. The same applies to tests which have already been conducted, unless these are affected by a defect or its correction.
- 6.5** Work and labour are also deemed as accepted, even without express declaration and without the provider's request for acceptance,
- a) if the customer utilizes the work and labour for purposes other than testing (item 1.3), or
  - b) on payment, unless the customer has rightfully refused acceptance, or
  - c) if tests making use of test resources (items 1.3, 3.2) can be conducted without an occurrence of defects preventing acceptance.
- 6.6** Unless agreed otherwise, identifiable partial services are also accepted individually in accordance with these provisions.

## 7. Customer's claims due to defects

- 7.1** The customer may assert claims due to defects only if the reported defects can be reproduced or proven in another way. This also applies to defects for which rights are reserved during acceptance. Item 3.3, in particular, applies to reporting defects.
- 7.2** If the customer is entitled to claims due to defects, said customer initially only has a right to supplementary performance within a reasonable period. Supplementary performance comprises, at the provider's discretion, either defect remedy or replacement.
- 7.3** If supplementary performance fails or cannot be implemented for other reasons, the customer can reduce remuneration in accordance with legal requirements, rescind the contract and/or request compensation for damages or expenditures - within the scope of item 6 of 'AV Bitkom'. The customer is authorized to perform their own chargeable remedy for a defect only if this has not taken place despite expiry of a reasonable period granted for supplementary performance and the provider is responsible for the reason.
- If supplementary performance is delayed, item 3.4 of 'AV Bitkom' applies to the provider's compensation for damages and expenditures. Item 6 of 'AV Bitkom' applies to compensation for damages and expenditures.
- The customer shall exercise a right of choice to which they are entitled regarding these claims due to defects within a reasonable period, generally within 14 calendar days from the time of being able to realize the customer's right of choice.
- 7.4** Items 4 and 5 of 'AV Bitkom' apply respectively to material defects and defective titles.  
Section 641 paragraph 3 German Civil Code remains unaffected.

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## 8. Early termination

- 8.1** If a minimum contractual duration is agreed, then ordinary termination before expiry of this duration is excluded. The same applies to an agreed, fixed contractual duration. Ordinary termination is also excluded if the involved contractual relationship results in a special interest by the parties in having the work completed.
- 8.2** If the customer effectively declares ordinary termination before acceptance, the provider is authorized to request the agreed remuneration; however, the provider must credit the savings in their expenditures resulting from cancellation of the contract, or earnings acquired through use of their staff for other purposes, or not acquired through wilful neglect. Accordingly, it is presumed that the provider is entitled to 10 % of the agreed remuneration for the part of the work and labour which has not yet been rendered.
- 8.3** The right to termination for important reasons remains unaffected. If the provider is not responsible for extraordinary or partial termination, the customer must reimburse the performance rendered until termination. In addition, the customer must pay 10 percent of the agreed reimbursement due for the part of the work not yet delivered as a lump-sum compensation for claims and damages. Proof of lesser expenditure or damage by the customer, or greater expenditure or damage by the provider, shall remain unaffected.

## 9. Validity of 'AV Bitkom'

Bitkom's general contractual terms (document titled 'AV Bitkom') apply additionally.

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