

General Terms and Conditions of CIMSOURCE GmbH

Status: April 2016

§ 1 Scope

1. The following General Terms and Conditions are binding between CIMSOURCE GmbH (CIMSOURCE in the following) and its clients (contractor) for all contracts, including but not limited to consulting-, software development and/or support- as well as training measures if not stated otherwise in the contract. For software products and –services the respective user license agreements apply. The Terms and Conditions stay in effect also for subsequent contracts with the same contractor, without CIMSOURCE having to refer to the Terms and Conditions in each single case. In these cases the Terms and Conditions apply in the release that was effective at the date of the proposal.
2. Services and proposals/quotes from CIMSOURCE base solely on these Terms and Conditions in connection with the respective quote /contract. By accepting the quote/ conclusion of contract the contractor agrees to the Terms and Conditions as binding. The Terms and Conditions apply exclusively. Deviant, conflicting and/or supplementary General Terms and Conditions of the contractor are not accepted and become in no way part of the contract, even if CIMSOURCE has not objected explicitly in writing. A provisional notice of objection is issued hereby.
3. Amendments of these General Terms and Conditions shall be communicated to the contractor in writing or via email. If the contractor does not object within 4 weeks after receiving the change notice, the amendments are qualified as accepted. In the event of an amendment of these General Terms and Conditions, the contractor shall be advised specifically of his right to object and the legal consequences of his remaining silent.

§ 2 Contractual object

1. CIMSOURCE delivers project-related (consulting-) services to the contractor (e.g. reengineering of business processes, preparation of master data, data assessment, software implementation,...) and/or software development (e.g. requirements documentation, programming,...) which are specified in type and scope in the proposal/contract. The proposal/contract specifies further the prospective duration of the project and the amount and type of compensation and all incidental cost.
2. CIMSOURCE executes the contracted tasks on its own authority and is not subject to directives of the contractor. CIMSOURCE has no authority to issue directives to employees of the contractor.
3. CIMSOURCE shall be entitled to assign vicarious agents (e.g. sub-contractors) to discharge its' contractual obligations. The persons assigned by CIMSOURCE do not enter into an employer-employee relationship with the contractor and are not subject to the contractor's authority to issue directives. This applies in particular if the persons assigned by CIMSOURCE deliver the services on the premises of the contractor.

§ 3 Conclusion of contract

1. All proposals from CIMSOURCE are subject to confirm.
2. The parties enter into the contract with the written order confirmation of CIMSOURCE or as CIMSOURCE starts the project work.

§ 4 Time and location of activities

Time and the location of the assignment are specified in the proposal/contract.

§ 5 Type and scope of services

1. Type and scope of the services to be rendered are specified with contractual regulations. Authoritative for that are:

- Contract (including the proposal and performance specification, collateral agreements, presentations, project plan, other attachments)
 - Terms and Conditions of CIMSOURCE GmbH,
 - German law.
2. In case of disputes the regulations apply in the above listed order.

§ 6 Delivery, acceptance, passing of risks

1. Both for the scope of services and the due date of delivery the order confirmation is binding. The delivery will be discharged at delivery department of client, where risks pass over to the client. Software development, programming services or software implementations shall be regarded "delivered" with the notification (by mail or email) form CIMSOURCE GmbH that the software "ready for operation". Software is provided ready for operation if CIMSOURCE GmbH has communicated the access codes (access to operational SaaS-module) to the user and the user has logged in for the first time.
2. Client is obliged to check the delivery (software, service,...) immediately without delay for completeness and conduct the acceptance or to place a notification of defects or disorders respectively.
3. In the event that during delivery deviations from the contracted services and/or deficiencies become obvious, the respective notification shall be communicated to CIMSOURCE GmbH within 3 working days.
4. If damage arises on the part of the client due to a delay caused by CIMSOURCE GmbH, the client may claim a compensation for the delay. The compensation shall, for each full week of delay, be ½% but shall in total be limited to 5% of the value of that fraction of the overall delivery, which cannot be used in time or as specified in the contract. Further claims shall be excluded.
5. If the delivery delay is caused by the client, CIMSOURCE will notify readiness for delivery to the client. With the receipt of this notification by the client the delivery is fulfilled. In this case CIMSOURCE GmbH is entitled to box and store the ordered services at the clients risk and to invoice the client.
6. In case of force majeure or delivery shortages of suppliers CIMSOURCE may claim a reasonable prolongation of delivery time.
7. CIMSOURCE GmbH shall be entitled to partial shipments.

§ 7 Obligations to co-operate

1. The contract parties each assign a contact person who is responsible for the execution of the contract. The contractors contact person shall be available for the employees of CIMSOURCE during the specified working hours, shall be entitled to make decisions necessary for the project work to go on and to give access to information necessary to perform the service and to provide necessary documents in due time. The respective names shall either be fixed in the proposal/contract or are communicated to each other following the conclusion of the contract. Changes have to be communicated to the other party without delay.
2. The client is obliged to support the activities of CIMSOURCE. The client will ensure all necessary prerequisites free of charge on his premises and operations for CIMSOURCE to perform the contracted services. These prerequisites include, but are not limited to, for the client
 - to provide sufficient work space for the employees of CIMSOURCE including the necessary working equipment as needed
 - to grant CIMSOURCE employees access to his premises at normal working hours

- to ensure the necessary pre-conditions in case of software installations by CIMSOURCE, especially the provision of the needed personnel and hardware.
- 3. If the client fails to discharge his contractual obligations in due time, the deadlines specified in the proposal/contract will be postponed by the number of working days that the clients' obligations were delayed. Is the co-operation delayed by more than 7 calendar days, the deadlines will be postponed by an additional 10 working days, which are granted by the client for CIMSOURCE to restart the discontinued activities. In case of a delay of more than 10 calendar days CIMSOURCE is entitled to charge all stand-by costs (personnel etc.) related to the delay.

§ 8 Default of acceptance

1. If client is in arrears with the acceptance of services or if client fails or delays his obligations to cooperate according to § 7 (1 and 2) or otherwise obligated cooperation, CIMSOURCE GmbH shall be entitled to invoice those services unable to render, without the obligation to render those services at a later point in time.
2. CIMSOURCE GmbH's claims for the reimbursement of additional costs caused by the default of acceptance shall remain unaffected.

§ 9 Compensation and incidental cost

1. Compensation shall be according to the actual time spend (charge by hour), if not stated otherwise in the contract. Travel times are treated as consulting/service times.
2. The billing rates are defined in the official "CIMSOURCE price list" (valid at the date of order confirmation) if not stated otherwise in the order confirmation/contract.
3. Billing rates and other charges are stated excluding VAT.
4. The client shall refund all incidental costs like travel expenses, hotel charges, daily allowances and third party charges that are incurred for the fulfilment of the contract against presentation of receipt. In case of third party charges that are directly reimbursed by the contractor, CIMSOURCE shall be entitled to charge a handling fee of 15%.
5. If the contracting parties have not concluded an explicit agreement about the compensation of a service from CIMSOURCE, which the contractor could expect only to be rendered in return of a compensation, the contractor shall be obliged to pay the usual compensation. In case of doubt the billing rates (§ 9 para 2) of CIMSOURCE are considered "usual compensation".
6. Idle times of CIMSOURCE attributable to the contractor shall be compensated as service times.

§ 10 Invoicing; due date; payment conditions

1. CIMSOURCE issues invoices for consulting and other services monthly in arrears and proves the time spend using customary service records upon the contractors' request. In addition to the direct compensation, incidental costs and expenses, invoices from CIMSOURCE shall state explicitly the statutory value added tax applicable at the date of invoicing.
2. Software-as-a-Service (SaaS) modules (e.g. ToolPal-Standard, SalesSupport Server) will be invoiced after the respective module is initially provided ready for operation.
3. License fees for supplementary software modules, interfaces or compensation for customizing or other programming work shall be invoiced according to the "30-60-10-schedule". This means that 30% of the contract value become due with the placement of order, 60% after delivery and 10% after acceptance of the overall system.
4. Compensation for services are due at the date the services are rendered and payable directly net upon receipt of invoice, if not stated otherwise in the order confirmation.
5. If the client is in arrears with payments, CIMSOURCE charges interest on the arrears at the rate of two percentage points above the interest rate of its commercial bank for business credit. The right to assertion regarding further default damages and of the legal default charge remains reserved.

6. Contractor may set off payments from claims or assert the right to withhold payments only for claims defined by an enforceable final judgment. The right to withhold payments shall only be asserted for claims stemming from this contract.
7. If after the conclusion of the contract a significant worsening of clients financial situation becomes aware to CIMSOURCE, CIMSOURCE has the right to deliver or perform services outstanding only in return of pre-payment or the provision of a security. This obligation to pre-payment applies in this situation also to success fees/performance bonuses and to other deferred compensation shares according to the contract. If at the date of the request to prepay the amount of success fee is not known or the performance indicators are not reached yet, CIMSOURCE will fairly determine the pre-payment sum and apply for payment. Until the performance indicators are reached and/or until the precise amount is fixed CIMSOURCE will keep the prepayment on a special account. Upon request of contractor and on the contractors' expense the prepayment may be transferred to an escrow account of a German notary public or lawyer and an agreement for the unconditional transfer to CIMSOURCE as the preconditions are reached may be reached.
8. If pre-payment or security is not rendered after an appropriate period of grace, CIMSOURCE may step back from the contract or cancel the contract for cause with immediate effect within 2 weeks after the period of grace ended. Any deliveries or rendered services up to that point become due for payment immediately.
9. Repayment of pre-paid amounts according to paragraph 10.7 may only be claimed if the failure to achieve the contracted results is due to causes attributable to CIMSOURCE.

§ 11 Change procedures

1. Contractor may request the change of the contracted services according to the proposal/contract. The request for change must be submitted by the contractor in writing. CIMSOURCE is obliged to submit a quote for the required changes upon request of the contractor. CIMSOURCE will evaluate the change request if and under which conditions the changes may be carried out and inform the contractor about the conclusion in due time.
2. The period to postpone the dates affected by the change request will be set under the consideration of the duration of the evaluation, of the duration of the execution of changes and of an appropriate lead time. This shall be fixed in a supplemental agreement.
3. Contractor shall bear all cost of CIMSOURCE incurred by the change request. This includes, but is not limited to, the evaluation of the change request, the creation of a change proposal and eventual idle times. If not stated otherwise, all activities of CIMSOURCE in relation to the change request shall be compensated with the billing rates as fixed in the proposal/contract.

§ 12 Data protection

1. CIMSOURCE and it's vicarious agents shall be bound to the secrecy of data according to § 5 of the BDSG (Bundesdatenschutzgesetz). The obligation of the data secrecy covers all circumstances and factual affairs of any individual person and all protective measures for this information. CIMSOURCE shall be in particular obliged not to process or to use personal data.
2. Applicable regulations concerning the handling of personal data must be complied with.
3. These obligations shall survive the termination of the contract.

§ 13 Duty of confidentiality, keeping and return of documents

1. The contractors are obliged to treat any information concerning business- and/or trade secrets of the other party as confidential and not to disclose any such information to third parties without the prior written consent of the other party. This obligation does not apply to information which is already known to the receiving party or is publicly available at the time of the disclosure; is

- disclosed to the receiving party by a third party who is not in breach of an obligation of confidentiality; becomes publicly available after disclosure through no act of the receiving party or is developed by the receiving party without breach of this agreement. Another exception is the disclosure of information to public authorities in the course of official proceedings.
2. CIMSOURCE shall keep all business documents, that have either been submitted by the client or were generated under contract by CIMSOURCE with due diligence and care and to make sure that no third party gains access to these documents. This includes, but is not limited to, reports, organizational charts, flow charts, mind maps, value stream maps, tables, calculations and drawings and all programs and data files that are property of CIMSOURCE and concern the matters of the contractor. After termination of the contract and upon request of the contractor CIMSOURCE will return all documents handed over by the contractor to the contractor at the contractor's expense. If no request to return the documents is issued by the contractor within 3 years, CIMSOURCE shall be entitled to destroy the documents. CIMSOURCE shall be entitled to archive copies, if this is necessary for standard accounting and/or documentation.
 3. These obligations shall survive the termination of the contract.
 4. The contractors shall obligate their employees and vicarious agents to these terms.

§ 14 Liability for mal-performance (qualitative deficiencies)

1. If the contracted consulting-work and/or service is not delivered according to contract or is delivered faulty and if this mal-performance is attributable to CIMSOURCE, CIMSOURCE will deliver the contracted service according to contract and free of mistakes at no additional cost for the contractor within an appropriate period of grace. Precondition is a formal complaint of the contractor, which has to be submitted without delay, no later than 2 weeks after obtaining knowledge about the non-contractual or faulty performance. If the contractual delivery of the services fails substantially even within an appropriate period of grace set by the contractors, the contractor is entitled to terminate the contract without notice.
2. In case of a termination according to paragraph 14.1 CIMSOURCE shall be entitled to compensation for the services rendered until the termination became effective. Compensation is canceled only for those services that the contractor proves worthless for use within 4 weeks after the termination. To be useful in the sense of the sentence above the contractor's theoretical usage option is sufficient.
3. The right to termination for cause remains unaffected. In this case also CIMSOURCE shall be entitled to compensation for the services rendered until the termination became effective. Compensation shall be canceled only for those services that the contractor proves worthless for use within 4 weeks after the termination.
4. Any further warranty claims for mal performance and/or qualitative deficiencies are excluded. This exclusion shall not apply in the event of damage caused intentionally or by gross negligence and to claims under the product liability law. Further to that this limitations of liability shall not apply for claims from injury to body and health attributable to CIMSOURCE.

§ 15 General liability regulations, obligations to represent

1. Liability for qualitative deficiencies is regulated in the above paragraph 14. These regulations are final; in case of willful intent or the assumption of a guarantee by CIMSOURCE the legal regulations shall remain unaffected.
2. In all other cases, CIMSOURCE is only liable for gross negligence and willful intent. In the case of minor negligence resulting in the infringement of essential contractual duties attributable to CIMSOURCE, CIMSOURCE's legal representatives or vicarious agents, the liability is limited to compensation for foreseeable damages typical for this type of contract and that is within reason. Any further liability shall be excluded.

3. The aforementioned limitations and exclusions of liability shall not apply to claims arising from product liability and not to injury of life, body and health attributable to CIMSOURCE.
4. The contractors will agree to limit the liability and lay down the respective maximum sum per case in the individual contract.
5. In case that a maximum sum per case to limited the liability has not been agreed effectively, paragraph 15.4, the liability shall be limited for each case to the amount that equals the total compensation of CIMSOURCE for the respective contract.
6. The duty to review the legal legitimacy of the implementation of the outcome of the consulting services is in the responsibility of the contractor. This applies, but is not limited to, if proposed measures infringe provisions of the Fair Competition Act, the Data Protection Law, copyright law and/or specific regulations concerning product advertising and specific regulations in the area of activities of the contractor. CIMSOURCE will advise contractor about legal risks, as far as they become known during the preparation/implementation.
7. CIMSOURCE is in no way liable for statements about the products, services and/or performance of the contractor or other statements made pursuant to the consulting service. CIMSOURCE is also not liable for the ability to protect or register patents, copyrights, trademarks on any during the fulfilment of the contract communicated ideas, suggestions, proposals, concepts, designs etc. The examination of legal questions is explicitly not CIMSOURCE's task and is without exception the contractor's obligation.
8. In case a loss of data or programs is attributable to CIMSOURCE, CIMSOURCE shall be liable only up to the amount of the expenditure incurred for restoration, provided contractor has made backups on a regular basis, at least at 24-hour intervals, in order to ensure that lost data can be restored by exerting reasonable efforts. Data to be backed up include apart from the data of contractor all data (customer data, user data, ordering information etc.) that have been gathered during the communication with information- and communication media (Internet etc.) regardless where the storage medium is located.
9. CIMSOURCE shall not be liable, even for bindingly agreed deadlines and dates for delays in delivery and services as a result of force majeure and events which render the provision of the service significantly difficult or impossible, including but not limited to strike, lock-out, natural disasters, acts of governmental authorities, even if they occur at CIMSOURCE's suppliers or the suppliers' sub-contractors.

§ 16 Force majeure

1. Incidents of force majeure that make it difficult or impossible for CIMSOURCE GmbH to fulfill the contract shall waive CIMSOURCE's obligation to deliver and/or to postpone it's obligations for the time of the hindrance.
2. Incidents of force majeure include but are not limited to war, strike, lock-out, riots, expropriations, substantial changes in law, storms, floods and other natural disasters and other incidents not attributable to CIMSOURCE including, but not limited to water inrushes, power cuts and interruptions or destruction of data carrying lines.
3. Each party of the agreement shall inform the other party immediately in writing about any incident of force majeure.

§ 17 Statute of limitation

Claims due to mal-performance (qualitative deficiencies) (paragraph 14.) as well as contractual liability claims (paragraph 15) become statute-barred within one year as of the start of the statutory limitation period. This does not apply to gross negligence and willful intent of CIMSOURCE, CIMSOURCE's legal representatives or vicarious agents and not to claims arising from product liability or from injury of life, body and health. In these cases the statutory period of limitation shall apply.

§ 18 Transfer of user rights

1. To the extent that CIMSOURCE creates during the execution of the contracted services specifically for the contractor copyrighted or in other aspects protected results, CIMSOURCE grants a non-restricted, non-exclusive simple right to use the results and allows the contractor to use it according to contract.
2. The client warrants that as part of the contract by CIMSOURCE generated reports, organizational charts, flow charts, mind maps, value stream maps, tables, calculations and drawings, will only be used for proprietary purposes.
3. For legally protected services and/or copyrighted material that was used by CIMSOURCE for the fulfilment of the contract and that have been developed by CIMSOURCE or third parties independently of the contract, contractor is granted a non-exclusive user right to the extent required by the scope of the contract. CIMSOURCE commits itself not to use any material (components, graphics, templates, elements, concepts, ideas and the like) that might lead to an infringement of third party intellectual property rights.
4. The compensation for the right to use the legally protected material that was developed while executing the contracted services is included in the compensation for the respective services. The transfer of user rights becomes effective with the payment in full of the contracted compensation for the respective service by the contractor.

§ 19 Term of contract; reduction of the scope of the contract

1. The contract terminates as specified in the proposal/order confirmation.
2. The contract may be terminated earlier by written notice, if special operational reasons of the contractor make this necessary. The deadline for CIMSOURCE to receive the written notice is 8 weeks prior to the termination date. In this case payment is regulated as follows:
Full payment is due for those services rendered until the termination of the contract. For those services unable to perform because of the early termination, payment is waived to the extent that CIMSOURCE saves effort and/or generates sales with the reallocation of resources to other assignments or intentionally fails to reallocate the resources.
3. For the premature termination to the effect of this regulation only those special operational reasons are accepted that make it obvious without doubt that contractor may not use/implement the outcome of the contracted services of CIMSOURCE due to a situation caused by an external impact after closing the contract. The regulations of § 627 BGB (German Civil Code) are hereby expressly excluded

§ 20 Duties of trust

Client and CIMSOURCE commit to mutual loyalty. Client agrees that he will not during the term of the contract and for a period of 6 months thereafter hire employees of CIMSOURCE or to engage them otherwise. This agreement shall be effective for the client and for affiliated companies. Infringement shall result in a penalty of EUR 30.000,--.

§ 21 Final

1. Applicable law is solely the law of Germany (Bundesrepublik Deutschland) with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
2. The sole and exclusive court of jurisdiction for all disputes arising from this contract is Aachen, Germany.
3. Changes and additions of this Terms and Conditions, of the proposal/contract as well as the amendment or the revocation of the written form are only valid if they are agreed upon in writing, except if they are based on an express or individual contractual agreement.
4. If single provisions of the Terms and Conditions are legally void, the remaining provisions stay effective. The contracting parties agree to replace legally void provisions with effective provisions according to the initial intent.