

*Translation provided for information only.
German Terms & Conditions are the legally binding version.*

1. Scope

1.1 The following terms and conditions apply between diva-e Cloud GmbH (hereinafter referred to as "diva-e") and the client for all assignments, unless otherwise agreed in writing.

1.2 These terms and conditions shall also apply to future business between the parties.

2. Start and conclusion of the contract, subject matter of the contract

2.1 The services of diva-e are subject to change, unless otherwise expressly stated in the tender. The placing of an order by the client based on a non-binding tender is only a contractual offer by the client, to which the client is bound for four weeks from receipt of the order by diva-e. A contract is only concluded if diva-e accepts the client's offer of contract by means of a written confirmation of order, or if a written contract is concluded between diva-e and the client.

2.2 The performance of both sides is bound by the type and scope of the following contractual components: 1. the individual contract, 2. the service description with the special conditions for the project or product, and 3. these general terms and conditions, which consist of the general conditions as well as the additional terms and conditions of the relevant individual contract type concluded. The additional terms and conditions supplement the general terms and conditions. In the event of discrepancies between sections of the contract, the above order of precedence shall apply. diva-e shall use the following individual contract types: contracts for the creation and transfer of software and other work, for the maintenance of software, support contract and contract for other services.

2.3 If the client requires differing or supplementary conditions, diva-e's express written agreement is required for them to be effective. A letter of confirmation of an oral agreement shall only be effective if confirmed in writing by the receiving party. All orders as well as the acceptance of a guarantee for certain properties and any special assurances require written confirmation by diva-e in order to be effective. This requirement for written confirmation can only be waived by a written agreement.

2.4 The client shall not make the tender available to third parties in whole or in part, even in an edited version, without the prior written consent of diva-e. Software or other items provided by diva-e to the client in advance of the contract are (intellectual) property of diva-e, which may not be reproduced and made accessible to third parties. If no contract is concluded, they must be returned and/or deleted and must not be used.

2.5 diva-e reserves the right to make minor technical deviations from the content of the contract, provided that the client does not suffer any technical or economic disadvantages as a result of this.

3. Remuneration, Prices, Taxes, Reservation

3.1 Remuneration, prices and additional costs are exclusive of statutory VAT. No early payment discount is granted.

3.2 Remuneration and the costs of deliveries and services are specified in the contract. In the case of time-related remuneration, the amount of the remuneration per time unit is also determined in the contract according to the qualification of the employee assigned.

3.3 If remuneration is agreed based on time worked, it is calculated according to the diva-e activity reports which are kept by each diva-e employee on the basis of the actual time expenditure incurred in units of 0.5 hours. Travel times are charged at 50% on weekends (Saturday and Sunday) and on public holidays at 100% of working hours. An invoice will be raised retrospectively every calendar month.

3.4 If remuneration is agreed at a fixed price, diva-e shall be entitled to an advance payment and to reasonable advance payments in the following minimum proportions: at the beginning of the contract 35%, at the first part delivery at the latest 6 months after the start of the contract 35%, and at the time of delivery of the service 30%.

3.5 In addition to the remuneration, diva-e will charge the additional costs incurred (travel/flight and accommodation costs, meals and other travel expenses) on a monthly basis. diva-e is responsible for the selection

of transport and accommodation. Services and additional costs can be invoiced separately.

3.6 All additional costs are to be borne by the client at the actual amount incurred. The client will be provided with copies of supporting documents on request.

3.7 If the working time is outside normal working hours, the following surcharges shall be added to the remuneration per working hour: 50% on working days between 20:00 and 6:00 and on Saturdays, 100% on Sundays and public holidays (State of Thuringia).

3.8 Invoices are due for payment immediately without deduction and must be paid within 10 days after receipt of the invoice by the client.

3.9 The client can only withhold or set off payment against undisputed or legally established claims or those nearing a ruling.

3.10 In the case of a defect, the client can only withhold payments proportionate to the defect. This shall not affect section 10.4.

3.11 The contractual rights to the software or service supplied by diva-e are only transferred to the client after full payment.

3.12 If, due to incomplete or inaccurate information or inadequate cooperation with the client, the work to be performed is significantly higher than the estimates made by diva-e when the contract was concluded, diva-e shall also be entitled to a reasonable increase in the original remuneration, even in the case of fixed-price remuneration or one with a maximum limit.

3.13 Any taxes or duties (in particular customs charges and duties, as well as consumer, gross income, sales, use and value added taxes) other than income or corporation tax (or similar income taxes) incurred by diva-e shall be borne by the client. If any such tax or levy to be borne by the client is to be withheld or deducted from a payment, the client shall increase the payment by an amount which ensures that diva-e receives an amount corresponding to the payment due otherwise after the retention or deduction.

3.14 If several clients (natural persons and/or legal entities) conclude the contract with diva-e together, they shall each be jointly and severally liable.

4. Collaboration obligations of the client

4.1 Close collaboration between diva-e and the client is required to ensure that work is delivered on time and in accordance with the client's requirements. Therefore, one or more individuals on the client side (contact persons) should be identified who will be involved in project progress issues, in defining requirements (specification), in providing necessary information and documents, in defining test criteria and procedures, in the error detection and elimination process, and in carrying out reviews and function tests. Costs incurred for these activities are to be borne by the client. If the client does not name a contact person or this person is not sufficiently available, the corresponding tasks will be carried out by a diva-e employee. The costs for the work carried out by the diva-e employee are to be borne by the client.

4.2 The client shall ensure that all contractually agreed obligations are provided on time, to the required extent and free of charge to diva-e. The content and scope of this work is defined in the relevant individual contract.

4.3 Data carriers provided to diva-e by the client, together with the content on them, must be technically flawless. If this is not the case, the client shall reimburse diva-e for all damages arising from the use of these data carriers and shall indemnify diva-e from all claims by third parties.

4.4 The client will retain copies of all documents and data carriers provided to diva-e, which diva-e can refer back to at any time free of charge. After performance of the work, diva-e is entitled to destroy the documents received from the client. diva-e will return documents at the client's request.

4.5 If the client does not fulfil their obligations at all, not on time or not in the agreed manner, the resulting consequences (e.g. delays, additional expenses) are to be borne by the client.

4.6 The client's obligations to collaborate are the main obligations.

4.7 The client shall provide all necessary support to diva-e's employees in their work on behalf of the client.

This support includes, among other things, ensuring that a qualified client employee is available at the place of performance, that the employees assigned by diva-e are granted free access to the relevant hardware and software at the agreed times, that this provision complies with the health and safety regulations, providing diva-e employees with access to the information required for their work at all times and providing them with all the necessary information in good time, ensuring diva-e employees have sufficient and suitable working space at the client's premises to fulfil the contract.

4.8 To resolve errors correctly, the error must be accurately described by the client and the error identified by diva-e. It is essential that errors are reported with an error message via the appropriate form, that diva-e is provided sight of the documents required to eliminate the error, that the client has not interfered with or modified the software, and that the software is run under the operating conditions set out in the documentation.

5. Steering Committee, Reviews

5.1 A Steering Committee shall be set up between the parties if necessary. This consists of an employee in charge of the project (Project Manager) from each side, their respective managers and, if necessary, other consultants.

5.2 Should problems arise during the course of the contract that cannot be resolved within the framework of day-to-day project work between the contracting parties, the Steering Committee shall be convened. This shall make a decision on the further course of the project which is binding on both parties.

5.3 In order to ensure successful collaboration that meets the client's requirements, joint reviews are carried out with the client. The type and scope of these reviews are agreed on a project-specific basis between the client and diva-e.

5.4 If the client does not fulfil the obligation to participate in these reviews appropriately, these tasks will be carried out by diva-e employees. The client is liable for any delays or increases in costs resulting from this.

6. Changes in work

6.1 Should the client make any changes during the course of the contract that affect the project result, diva-e shall be informed immediately in writing. diva-e's project manager then decides on further action in consultation with the contact person designated by the client. If the required change results in increased work to complete the project or if partial work already provided become unusable, the client must bear the necessary additional costs. This also applies if a fixed price has been agreed for diva-e's services.

6.2 diva-e shall submit a quotation to the client within a reasonable period of time which covers the changes requested by the client. The agreed delivery and service deadlines are generally extended by the number of calendar days which diva-e takes to examine the changes requested by the client, prepare a revised quotation or conduct negotiations on the changes, plus an appropriate restart period.

6.3 If the client does not accept the quote for modified services within a period of one (1) week or if a mutually agreed settlement within the framework of negotiations on the changes initiated within this period is not reached within two (2) further weeks, diva-e may, at its own discretion, either continue with the contract according to the original individual agreement or terminate this agreement.

6.4 The above provision shall also apply if diva-e proposes a change in their work to the client.

6.5 Should there be any changes during the course of the contract, diva-e shall inform the client in writing immediately. The client's contact person then decides on further action in consultation with diva-e's project manager. If a decision cannot be taken by mutual agreement between the two, the Steering Committee shall decide.

7. Handover

7.1 diva-e may submit part deliveries or part services for handover (partial handover). These include: self-contained phases to fulfil specific phases or services, self-contained and thereby functioning parts, self-contained documents or parts of documents.

7.2 The client will immediately implement every handover (including partial handovers) of diva-e's work. diva-e is entitled to participate in every handover.

7.3 The client is not entitled to refuse acceptance due to minor defects.

7.4 If the client does not reject or respond in any other way within fourteen (14) calendar days or a period agreed for handover, or if the client integrates the work into his operations, handover shall be deemed to have been carried out.

7.5 Complaints from the client during handover must be recorded in writing and signed by both parties in order to retain the resulting rights.

8. Delays

8.1 If diva-e is negligently late by more than two (2) weeks in keeping to a binding delivery or work deadline, the client can demand lump-sum damages for the period of the delay in the amount of 0.5% of the value of the delayed delivery or work, to a maximum of 5% of this value as long as diva-e does not prove a lesser amount in damages. All claims for damages arising from delay will thereby be settled. diva-e shall not assume any further liability in the event of delay; in no case shall diva-e be liable for damages beyond the limits laid down in the "Liability" provision. This does not apply if there is mandatory liability in cases of wilful intent or gross negligence.

8.2 If the client defaults on his payment obligation under item 3.8, late payments shall be subject to interest at eight percentage points (8%) above the European Central Bank's base interest rate annually. A further claim for damages remains unaffected.

9. Material defects

9.1 If the work (or diva-e's troubleshooting service within the scope of a software maintenance contract or as part of a support contract) shows a material defect, the client can either ask for the faults to be rectified or demand a new delivery (subsequent performance). Unless otherwise agreed, the period within which obvious defects can be reported shall be two (2) weeks from the date of handover. During the period, the client must record defects in the contractual work in a defect report, specify them precisely and notify diva-e in writing.

9.2 If the client has set diva-e a reasonable period of time after a first request and diva-e has refused subsequent performance or has made two (2) failed attempts to remedy the same defect, unless the nature of the issue or material defect or other circumstances give rise to something else, the client has the right to either demand the cancellation of the contract or a reduction in remuneration. The same shall apply if any subsequent performance is unreasonable for diva-e.

9.3 In addition, the client can demand compensation for damages or reimbursement of their wasted expenses if the legal requirements are met. In no case, however, shall diva-e be liable for damages in the context of the claim for material defects beyond the limits laid down in the "Liability" provision. Further claims for material defects are excluded: these liability limitations do not apply in cases of wilful intent or gross negligence.

9.4 In the case of defects that only result in an insignificant impairment of the agreed functionality or agreed quality, no claims of material defects can be made again diva-e.

9.5 If the defect does not seriously impair the use of a program, the solution to be provided by diva-e shall only be delivered as part of a subsequent version. If necessary, diva-e shall develop workarounds as far as this is reasonable; in the case of software from a third-party supplier, this shall only apply if diva-e is technically capable of doing so.

9.6 If, after a software error has been reported, diva-e has provided fault identification or troubleshooting services and there is no material defect, the client shall bear the costs incurred. The respective remuneration rates on diva-e's price list at the time when the work is delivered are used to calculate costs.

9.7 Liability for material defects expires for such work provided by diva-e which the client or a third party changes or in which the client or a third party intervenes in any other way, unless the client, when notifying diva-e of the defect, proves that the intervention did not cause the defect.

9.8 For proper troubleshooting, the client must describe the error sufficiently, the error must be identifiable for diva-e, and any errors detected must be notified by means of an error report in the form agreed in the contract. It is also necessary that the client provides diva-e with relevant documentation needed for troubleshooting and that software is used according to the operating conditions set out in the documentation.

9.9 If the defect is caused by the work provided by a third-party supplier, diva-e's liability for a material defect shall initially be limited to the assignment of a damage claim to which diva-e is entitled against the supplier. If the supplier refuses any subsequent performance or unreasonably delays it for the client, or if the supplier is unable to perform it for other reasons, the client's damage claim shall be directed against diva-e in accordance with the provisions of 9.2. The limitation period is suspended for the duration of the claim against the supplier.

9.10 Insofar as costs increase as a result of the object of the work being subsequently transferred to a place of performance other than the contractually agreed place of performance, any claims by the client regarding expenses required for the purpose of subsequent performance, in particular travel, labour and material costs, are excluded.

9.11 Claims for material defects shall lapse one (1) year after handover to the client or with the provision of the work if handover is not required. If software implementation is carried out by diva-e, the limitation period begins with the conclusion of the implementation.

9.12 Diva-e is entitled to call on third parties to remedy any material defects.

9.13 Information in brochures and other documents is for description purposes only and does not represent any guarantees. Guarantees require explicit and written confirmation by diva-e.

10. Defects in Title

10.1 If, in connection with the use of software in the contractually agreed operating environment, the client violates third-party property rights and the property rights holders claim against the client, the client must inform diva-e immediately in writing after receiving the notification from the third party. diva-e will, at its own discretion and at its own expense, provide the client with the right to use the work or adjust the work so there is no infringement, or recall the work at the invoice price minus a reasonable compensation for use. The latter only applies if diva-e cannot achieve any other solution with reasonable effort or if another solution is not appropriate.

10.2 If a solution as described in section 10.1 is not possible or is not appropriate for diva-e, the client is entitled to claim compensation for damages or expenses in accordance with the "Liability" provision.

10.3 With regard to the use of the work, diva-e shall inform the client immediately if claims are made against it due to the violation of third party rights.

10.4 Claims by the client against defects in title lapse after one year as described in section 9.11.

10.5 diva-e shall not be liable if such infringement is due to the combined use of the software provided with any other software or any modification by the client of the software provided.

11. Other performance disruptions

11.1 If a cause – including internal unrest and force majeure – for which diva-e is not responsible, including strike or lockout, delays the adherence to a deadline, the deadline shall be delayed by the length of the disruption, including an appropriate start-up phase. The client shall inform diva-e immediately of the cause and duration of any delay for which the client is responsible.

11.2 If costs increase due to a disruption to the delivery of work, diva-e may also demand payment of additional expenses according to the price list, unless the client is not responsible for the disruption and its cause lies outside their area of responsibility.

11.3 If the client withdraws from the contract due to improper performance by diva-e and/or can pursue damages in lieu of performance or claims as such, the client will, at diva-e's request, declare in writing within a reasonable period of time whether or not they will assert these rights or will continue with the provision of work. A withdrawal from the contract is only possible within the scope of the statutory provisions if diva-e is responsible for the delay in the provision of work.

The burden of proof for this lies with the client.

12. Dates, Deadlines

Dates or deadlines for work specified in contracts are only binding if they have been designated as binding by the client and diva-e in writing; otherwise all dates/deadlines are non-binding.

13. Non-solicitation

During the course of the project and for a period of twelve (12) months thereafter, the contracting parties will not actively solicit or attempt to recruit any employee of the other contracting party directly or indirectly.

14. Subcontracting

14.1 diva-e reserves the right to award subcontracts to third parties.

14.2 diva-e is responsible for selecting and monitoring these third parties.

15. Liability

15.1 diva-e shall be liable indefinitely for any damage caused by diva-e's wilful or grossly negligent breach of duty. Furthermore, diva-e shall be liable for damages resulting from injury to life, body and health without limitation, regardless of the degree of fault, as well as for damages resulting from the assumption of a guarantee according to § 276 paragraph 1 of the BGB (German Civil Code). If diva-e assumes a guarantee for certain characteristics of the contractual work, such a guarantee is only binding on diva-e if it has been declared in writing by diva-e.

15.2 Diva-e is only liable for damage caused by minor negligence in cases which violate the so-called cardinal obligations. Cardinal obligations are those fundamental obligations which were decisive for the client in concluding the contract and on whose compliance the client could trust. In the case of a slightly negligent breach of cardinal obligations, the liability per damaging event is limited to 10% for property damage and 25% for other damage – based on the volume of the remuneration diva-e is entitled to under the respective individual contract; for all damage within a calendar year, however, a maximum of twice these amounts.

15.3 In the cases of section 15.2, liability is limited to the foreseeable damage typical for the contract within the scope specified therein; liability for lost profit is excluded.

15.4 Statements made by diva-e about the characteristics (quality) of the work are only considered to be guaranteed if these statements have been made in writing by diva-e.

15.5 diva-e shall not be liable for damages caused as a result of data loss if the client has not ensured that this data can be recovered with reasonable effort from data material provided in machine-readable form. In addition, liability is limited to the amount incurred during a typical recovery effort if daily data backups had been performed, but up to the maximum amount specified in section 15.2.

15.6 The limitations of liability contained in these conditions do not apply to claims under the ProdHaftG (German Product Liability Act).

15.7 Insofar as liability is excluded or limited under these conditions, this also applies to the individual liability of diva-e's institutions, management, employees, representatives and subcontractors.

16. Client references

16.1 diva-e is entitled, taking into account data protection and confidentiality, to refer to the provision of work underlying the contract as a reference project, citing the client by name.

16.2 diva-e has the right to use the client's brands, trademarks, names, logos and slogans at trade fairs, conferences and other events, as well as in press releases, success stories and advertisements in print, electronic and other media (advertising material).

17. Data protection

17.1 diva-e processes your data according to the rules of the European and German data protection laws (the following provisions are those of the European General Data Protection Regulation, or GDPR for short), which means only to the extent and as long as it is necessary to fulfil the contract or to implement pre-contractual activities that take place at client request (Art. 6 Para. 1 b GDPR) or the client has given the consent to processing (Art. 6 Para. 1 a GDPR) or the processing is necessary to safeguard diva-e's legitimate interests or those of third parties, e.g. in the following cases:

assertion of claims, defence in legal disputes; detection and elimination of abuse; prevention and investigation of criminal offences; ensuring the secure IT operations; based on Art. 6 Para. 1 f GDPR or legal requirements, e.g. retention of documents for commercial and tax law purposes (Art. 6 Para. 1 c GDPR), or in the public interest (Art. 6 Para. 1 e GDPR).

17.2 Further information on data protection can be found at www.diva-e.com/datenschutzhinweise-cloud-en.

18. Confidentiality

18.1 The contracting parties are obliged, without prejudice to the provision in section 18 of this contract, to treat as confidential the information made available to them by the other party under this contract, as well as knowledge that they acquire during this collaboration on matters of a technical, commercial or organisational nature of the other contracting party and not to exploit or use or make it available to third parties for the duration or after the termination of this agreement without the prior written consent of the party concerned. Disclosure to third parties subject to a legal obligation to maintain secrecy does not require consent. Likewise, the disclosure to employees who require the information for their work in the performance of contractual services does not require consent. However, the parties shall ensure that such employees are bound by appropriate confidentiality obligations. Any use of this information is limited to the performance of this contract. Each party shall immediately notify the other party of any unauthorised disclosure or possible loss of confidential information as soon as it is aware.

18.2 Section 20.1 does not apply to information that the other party can prove to have lawfully received or would receive from third parties, was already generally known at the time this contract was concluded or subsequently became generally known without a breach of this confidentiality obligation, was previously in the possession of the party receiving this information, or was developed independently of the communication by the party receiving this information.

18.3 No property, licence, use or any other rights shall be granted by section 18 or any mutual communication of information, regardless of whether industrial property rights exist or not.

18.4 The prohibition of disclosure according to section 20.1 shall not apply if the parties are obliged to disclose the information by law or by judicial or official orders. In this case, however, the party responsible for disclosure is obliged to notify the other party of the disclosure of the information in advance so that the other party can defend itself against such disclosure, prevent it or limit it. The party responsible for disclosure will use its best efforts to ensure that all confidential information to be handed over is kept confidential by the authorities ordering disclosure.

18.5 The confidentiality obligations of this contract shall survive the termination of this contract for a period of three (3) years. With regard to the protection of personal data, the confidentiality obligation is valid for an unlimited period of time.

18.6 The provisions regarding data protection and data security according to section 17 remain unaffected.

19. Transfer of rights and obligations

19.1 The client may only transfer the rights and obligations created under this contract to third parties with the prior written consent of diva-e.

19.2 Consent may only be refused for an important reason.

20. Time limitations, Applicable law, Place of jurisdiction

20.1 All contractual claims for damages as well as claims for defective work lapse upon expiry of the statutory period of limitation.

20.2 German law applies exclusively to the exclusion of the UN convention on sale of goods.

20.3 The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Frankfurt, provided that the client is an enterprise or a legal entity under public law.