

General Terms and Conditions of Lynx-Consulting GmbH and the Companies Associated with Lynx-Consulting GmbH

Status: 2014/09/01

I. General Provisions

1. Scope

(1) These General Terms and Conditions (hereinafter called "GT&C") shall constitute the framework conditions for all contracts regarding the performance for deliverables and services between Lynx-Consulting GmbH, Johanniskirchplatz 6, D-33615 Bielefeld, Germany, and the companies associated with Lynx-Consulting GmbH within the meaning of §§ 15 ff. (hereinafter called "Lynx" or Company) and our Clients (hereinafter called "Customers" or "Clients").

(2) These General Terms and Conditions shall apply only if our Client is a company, a legal entity under public law or a special fund under public law.

(3) The purchasing conditions of our Customers shall obligate us only if we have expressly acknowledged them.

2. Subject of the Agreement

These General Terms and Conditions shall regulate the general conditions under which the Client tasks Lynx to provide services. The services to be provided shall be described separately within the offers or individual contracts to be concluded separately.

3. Conclusion of the Contract

Our offer shall be subject to change until a contract is concluded. The contract shall take effect by means of a separate written agreement or when we carry out the order. The contract depends exclusively on the content of the potential written agreement or order confirmation and these General Terms and Conditions.

4. Prices, Payment Terms, Delays

(1) If the payment terms have not been set separately by contract, the payment shall be deemed to have been agreed upon in accordance with our current price list.

(2) All prices quoted are subject to statutory VAT. If the VAT should change during the term of this contract, the statutory VAT in effect on the day the invoice is written shall be due.

(3) Compensation is due immediately and payable without deductions within 10 days of invoicing.

(4) Our Client may offset [our claims] with its own claims only if they are legally undisputed or have been explicitly recognised by us.

(5) If our Client is in default and/or should we become aware of facts that create a justifiable cause to doubt its creditworthiness we shall, without prejudice to any other legal rights, be entitled to:

- immediately call in all outstanding amounts due from the Client,
- suspend our own deliveries and performance of services,
- demand appropriate securities (e.g., in the form of a security guaranty from a credit institution in the EU,
- demand, in the event of default, interest on arrears of 8 % per annum above the base interest rate.

If we can prove higher damage due to this default we may present a claim. Our Client shall be entitled to prove that we have not suffered any damage or substantially less damage due to the default than we have claimed. In the event of a default, we shall furthermore be entitled to withdraw from the contract or to cancel it without notice and demand compensation due to non-fulfilment. We shall apply any interest discounts at the same bank rate that we use to refinance ourselves.

5. Employee Use

If employees of Lynx work at the plant of the Client temporarily to provide the services, then these employees shall not, with respect to time, type and manner of performing the services, be subject to the instructions of the Client. These employees shall only be subject to the house rules of the Client and its instructions regarding operational safety. A project manager or contact partner to be named by us shall coordinate the services to be provided.

6. Price Increases

If the contract was concluded at our prices, and should the prices for the material and processing that our calculations are based on increase by more than 5 %, we shall be entitled to raise our prices correspondingly by the total of the cost increase.

7. Schedules

(1) Delivery dates specified by us are plan dates, unless some other fixed date has been expressly agreed upon with us. Partial deliveries and partial performances are permissible within reasonable limits.

(2) Delays that fall within the area of responsibility of our Client or its vicarious agents (e.g., change requests, delayed delivery or return deliveries of materials, defective data or data that is not usable) will result in the schedule for the delivery of deliverables or services will be delayed correspondingly. Irrespective of the assertion of any other rights, if the delay exceeds a period of more than 3 months, we shall be entitled to withdraw from the contract or to terminate it.

(3) In case of force majeure or other unforeseeable, extraordinary circumstances that we are not responsible for (e.g., in the event of unforeseen difficulties in obtaining materials, operational difficulties, strike, lock-out, lack of means of transport, actions by the authorities, power supply difficulties and others, even if they occur at our suppliers) we shall, if this causes us to be delayed in the contractual delivery, be entitled to a delivery extension by an appropriate margin. This shall not apply if we are at fault regarding acceptance, provisioning or application. If we are incapable or unable to perform due to the circumstances mentioned previously, we shall be relieved of the obligation to deliver and perform. If the delivery delays last longer than 2 months, the Client shall be entitled to withdraw from the contract or to terminate it. Provided the above reasons apply, should the delivery schedule have been extended, or if we are not tied to the period of performance or if the Client withdraws or cancels, Client shall not be entitled to derive the right to claim damages therefrom. We shall only be entitled to refer to the above-mentioned circumstances if we inform the Client of these immediately.

(4) Should Lynx be delayed in performing the agreed upon services, then Client shall be entitled to rescind the respective contract, after Lynx was given an appropriate new deadline with warning of rejection and this period passed without results. Any claims for damages due to delayed performance by Client shall be limited, for the time of the delay, to 0.5% per finished week, however, not to exceed 5 % of the respective outstanding order value. In the event of a delay, Lynx shall not accept any further liability, unless accepting liability is mandated by law or in cases of intent or gross negligence.

8. Materials, Documents, Printed Client Material

(1) Materials, print materials, media, etc., to be provided by Client shall be provided to us free of charge.

(2) We shall not be obligated to check the stated quantity of materials and printed materials provided by Client. It shall be the sole responsibility of the Client that form and content of the material provided to us do not violate any legal provisions.

(3) Media made available by the Client shall, with respect to content and technology, be free of defects and free of the third-party rights, at least to the extent that they are being utilised. Otherwise, Client shall reimburse us for the damages that resulted from the use of inadequate media and indemnify us from any third-party claims.

9. Obligation to Cooperate and Provide

(1) Within the scope of providing the contractual services Lynx depends on the cooperation of and the provisioning [of supplies] by the Client. For this reason Client shall agree to support Lynx free of charge in accordance with the above mentioned duty to cooperate and provide. The cooperation obligations that Client must provide shall include, in addition to additional cooperation obligations that shall be agreed upon separately, the cooperation obligations mentioned in this paragraph.

(2) The cooperation obligations shall mean the activities of the Client. Provisioning shall mean making materials available. Except where expressly provided to the contrary in writing, the provision of materials shall be limited to the time required for utilisation - via leasing.

(3) Implementation of this contract requires cooperation by both parties that is close and based on trust. Among other factors essential to achieve the contractual objectives are within the Clients personnel, organisational and professional area of responsibility. In addition to the cooperation obligations specified separately, Client shall, if so requested,

- (a) concretise together with Lynx the requirements regarding the services to be performed by Lynx in writing, in a clear and easily understood form;
- (b) make available the documents, data and information required to perform the services to be provided in a timely manner, in particular regarding existing equipment, devices, software and software components that are intended to work with the services to be provided;
- (c) make available test data, test scenarios and other auxiliary means necessary to perform the services to be provided in a timely manner;
- (d) document any faults or disruptions of services that were provided that were found within the scope of testing or production operations in a manner that is clear and easily understood and notify Lynx thereof immediately;
- (e) cooperate in limiting the sources of faults and support the removal of faults within a scope that can be reasonably expected;
- (f) to make timely decisions regarding the investments necessary within the scope of the contractual cooperation and to initiate them is required;
- (g) inform Lynx in a timely manner about changes that affect its provision of services.

10. Right to Use of Proprietary Software

Insofar as Client provides Lynx with software for Lynx to run, modify, adjust or use this software in any manner for Client, this software shall be listed in the respective offer or separate contract. Unless otherwise provided for in the enclosed offer or separate contract, Client grants Lynx a simple, non-exclusive right to the software that is limited to the duration of the respective contract, to utilise the software exclusively for the purpose of fulfilling the respective contract, to transfer it to Lynx systems and to load it onto them, to display it, to run it, to save it, to copy it, to edit it and to combine it with other (program) materials. The above mentioned utilisation rights shall expire automatically upon expiry of the contract, without it requiring another action or declaration by Client.

11. Utilisation of Third-Party Software

Lynx shall inform Client if it utilises third-party software to perform the contractual services, such as so-called open source software. In this event, Client shall agree to meet the utilisation and licensing obligations arising from the utilisation of third-party software.

12. Procedures for Changes in Performance

(1) The parties may suggest changes in the content and scope of the agreed-upon performance (hereinafter in short "Change Request") at any time.

(2) Change Requests shall be submitted in writing.

(3) Should Client submit a change request to Lynx, Lynx shall inform the Client of the estimated expenditure, the time it would take to examine the change request, the additional remuneration that might be due for examining it as well as the additional time required to carry out the change request. Services that are provided within the scope of a change request shall be invoiced in accordance with the agreed-upon daily rate. Should Client order an examination of the change request at the terms it was informed of, Lynx will provide its estimate on what effect the change request will have if it is implemented. Otherwise Lynx shall not be obligated to examine the change request.

(4) Lynx shall not reject implementing a change request without having a significant reason for doing so. Significant reasons are, for example, if Lynx believes that the success of the projects would be endangered as a result of the implementation or if the desired changes are outside the performance range or performance capability of Lynx. The Client may reject change requests submitted by Lynx without having to provide a reason. If the Client rejects change requests against the recommendation of Lynx, Client shall assume the responsibility for the negative consequences arising from the rejection. This shall not affect the contractually agreed-upon obligation to perform by Lynx.

(5) For change requests initiated by Lynx, in particular those that are required due to cooperation obligations that the Client did not perform or changed legal, technical and/or organisational framework conditions the daily rates shall apply.

(6) Contract changes shall become effective only after a written agreement has been signed by the authorised persons of the parties to the contract which shall contain the changes associated with the implementation of the change request (in particular regarding the performance content and cope thereof, schedule, remuneration, also in reference to the whole project). Unless otherwise agreed upon, (in writing, by email or by having it included in the meeting minutes signed by both parties), Lynx shall continue its work on the basis of the current contract.

13. Performance Disruptions

(1) We shall perform our contractual services with the care and diligence of a prudent businessman. Our description of services to be rendered, indication of the utilisation and our advertising statements do not constitute a warranty regarding functionality or properties. Oral statements or promises shall be binding if confirmed in writing.

(2) If not provided for otherwise in the performance-specific Terms and Conditions for individual performance areas, Client shall be obliged to provide a notification of defect within 3 working days after he had an opportunity to gain knowledge thereof. Client shall claim other performance defects as soon as they were discovered. The timely sending of the notifications shall suffice.

A faulty part shall not entitle to a claim that the delivery or performance in its entirety is faulty, unless Client is not interested in the non-defective part.

(3) If not provided for otherwise in the performance-specific Terms and Conditions for individual performance areas, we shall warranty our deliverables and services to be provided to be free of defects for a period of 1 year from date of delivery. Should Client be entitled to claims for defects, he at first shall only be entitled to subsequent performance within an adequate period of time. At our discretion, subsequent performance shall be comprised of either the removal of the defect or new performance. Client shall agree that defects that are the responsibility of Lynx may also be removed by means of a workaround, provided the defect does not substantially affect the functionality of the services to be provided and if the removal of the defect would otherwise be associated with extraordinarily high costs. If the subsequent performance fails or if it cannot be carried out for other reasons, Client may, within the statutory prerequisites, lower payment, withdraw from the contract or claim damages or reimbursement of expenses in accordance with our scope of liability according to our General Terms and Conditions. Client shall be entitled to carry out internal rectification against payment only if the defect was not removed despite an adequate period of time for subsequent performance having passed and if we are responsible for the cause.

14. Liability

(1) We shall assume unlimited liability for damages caused deliberately or through gross negligence, for fraudulently concealed defects, in case we warranted the quality of a service or for damages that culpably violate life, limb, or health and in the event of our compulsory liability under the Product Liability Act.

(2) Lynx shall be liable for the destruction of data only in cases of gross negligence if Client has made sure that these data from data media that is available in readable form can be reconstructed at reasonable cost. In this case, the liability of Lynx shall be limited to the recovery expense. In the case of gross negligence we shall accept liability for damages that were caused by hardware components that we used. Sentence 1 of this paragraph shall apply accordingly.

(3) In addition, we shall be liable for the culpable breach of fundamental contractual obligations. The obligation to meet claims shall be limited to those typical damages which we reasonably could have foreseen at the time the contract was concluded. In addition, they shall be limited in their amounts as follows:

- (a) For damages that the liability insurance company covers due to the reason and the amount, we shall be liable for each claim up to 1,500,000.00 €, for all damage claims per contractual year up to 3,000,000.00 €.
- (b) For damages that are not covered by the liability insurance company due to the reason and the amount we shall be liable for each claim up to 50,000.00 €, for all damage claims per contractual year up to 100,000.00 €.

(4) The limitations in section 14 paragraph (3) shall apply accordingly if Client requests reimbursement for futile expenditures instead of compensation for damages.

(5) We shall reserve the right to charge Client with contributory negligence.

(6) Otherwise we shall be exempt from liability.

15. Confidentiality/ Data Protection

(1) Each of the two parties shall be required not to pass on to third parties or to make available to third parties in any manner all information and documentation of the other party which it received in the fulfilment of this contract. To ensure this, each party must take the appropriate measures in its business that would ensure that the above obligations are met. These obligations shall be valid as long as and to the extent that the referenced information and/or documentation is not publicly known, without assistance from the party obligated to keep confidentiality.

(2) Within the scope of the purpose of the contract, Lynx shall be authorised to process the personal data it has been entrusted with or to have it processed by third parties, while observing the legal data protection requirements. Apart from that, any forwarding or making available to third parties in any manner of information or documents requires the written authorisation of the respective other party.

(3) The obligation for confidential treatment shall not apply to ideas, concepts, know-how and methodologies that relate to the creation of software as well as data that are already known to Lynx or which were known outside this contract. Lynx may include the name of the Client in a list of references. All other references to the Client as a Customer shall be discussed with Client in advance.

16. Place of Jurisdiction and Applicable Law

The place of jurisdiction for all disputes arising from this contractual relationship between the parties shall be the site of our headquarters, Bielefeld, Germany. The law of the Federal Republic of Germany shall apply, excluding the provisions of the CISG.

17. Miscellaneous General Provisions

- (1) Clients may assign the rights arising from this agreement only after prior written authorisation from Lynx.
- (2) Changes and additions to this contract shall be in writing. This shall also apply to the waiver of the requirement of written form.
- (3) With the exception of legal explanations, the sending of emails or faxes shall also meet the written form requirement.

II. Special Contract Terms and Conditions for Supplying Services, in particular for Creating Software

1. Scope

(1) These performance-specific Terms and Conditions contain, supplemental to the General terms and Conditions from Section I, the specific rules for software projects that Lynx-Consulting GmbH, Johanniskirchplatz 6, D-33615 Bielefeld, Germany, and the companies associated with Lynx-Consulting GmbH within the meaning of §§ 15 ff. (hereinafter called "Lynx" or Company) shall provide for our Customers/Clients (hereinafter called "Clients").

The services shall comprise, in particular, the following:

- Creation of software
- Comprehensive parameterisation, modification and expansion of individual and standard software
- Test, installation and training

(2) Insofar as it is necessary for proper performance, the services to be performed shall be performed at the Client's place of business. Otherwise, the services shall be performed at Lynx.

(3) We shall be responsible for the success of the project only to the extent that

- (a) the criteria that are essential for this have been defined concretely and definitely in the description of services to be rendered with respect to scope and effect at the time the contract is concluded and that they are part of the contract (agreed-upon performance criteria) and
- (b) the Client met his cooperation obligation in a timely and proper manner.

Should one of the prerequisites according to a) or b) not be present, then we do not owe success, unless a cooperation of the Client that is not timely and not proper does not affect the services to be provided.

2. Acceptance

(1) The Customer shall declare to Lynx within 2 weeks after receiving the written acceptance request that he has accepted. During the testing period the Customer may conduct tests using his test data and test scenarios. Within the scope of the acceptance test, Customer shall examine all the functions of the software (including the interfaces). Acceptance criteria shall be those performance characteristics that are specified in the contractual agreement.

(2) Defects that might have to be claimed shall be classified in the following defect classes:

- (a) Defect Class 1
Extremely critical operation errors: the defect stops the item or essential parts thereof from being used
- (b) Defect Class 2
Critical operation errors: the defects hinders the utilisation of the item considerably
- (c) Defect Class 3
Miscellaneous errors that limit the utilisation slightly

(3) A defect/error of Class 1 is also deemed to be present when several Class 2 defects together have the effect of a Class 1 defect.

(4) In the case of a Class 1 defect the acceptance procedure shall be terminated. It shall begin anew if it has been recorded that there are no more Class 1 defects.

In the case of a Class 2 defect only the expiry of time shall be stopped until it has been recorded that there are no more Class 2 defects.

Class 3 defects do not hinder the acceptance procedure from continuing.

(5) The successful result of the test run (expiry of time) the services performed are deemed to constitute acceptance, even without a declaration by the Customer. The Customer may prevent the automatic acceptance by notifying us in a timely manner and in writing of acceptance-preventing defects by minutely describing the defect. The Customer and we shall jointly document the processes of the trial run. In addition, services are deemed to have been accepted - even before the end of the trial run - as soon as the Client uses them without reservation for production purposes.

3. Customer Claims

(1) The Customer shall only have claims for defects if the reported defects can be reproduced or otherwise proven. This shall also apply to defects for which rights are reserved at the time of acceptance.

(2) If the Customer has claims for defects, he initially shall only have the right to have them remedied within a specified period of time. At our discretion, the remedy shall involve either correction of the defect or creation of a new product. The customer hereby agrees that defects that fall within Lynx's area of responsibility, may also be corrected by workarounds as long as the functionality of the software is not significantly negatively impacted and the correction of the defect would not otherwise be associated with unacceptably high costs.

(3) If the remedy of the defect fails or cannot be implemented for other reasons, the Customer may legally reduce the amount paid, withdraw from the contract or demand damages or reimbursement in accordance with our general contract conditions. Client shall be entitled to carry out internal rectification against payment only if the defect was not removed despite a adequate period of time for subsequent performance having passed and if we are responsible for the cause.

(4) Only characteristics such as those expressly mentioned as "guaranteed characteristics" shall be guaranteed. Other characteristics shall not be guaranteed, not even by implication.

(5) Liability for defects and warranty of title for the services provided shall be terminated, if the Client or a third party makes changes to the object of services, which Lynx has not previously expressly approved, (e.g., implementation, programming, customising, hosting, system-sizing, system administration, data migration, etc.). Something different shall only apply if the Client proves that the defect was not the result of the changes and that the changes did not make it more difficult to identify and remedy the defect.

(6) Claims from material defects and defects of title as well as other violations of obligations shall be subject to the statute of limitations after one year, as long as the claims are not based on the injury of a person or their freedom and were not the result of intent, due to fraud, a warranty or gross negligence. The beginning of the statute of limitations for work performed shall begin with the acceptance, for other services it shall begin with delivery.

4. Rights of Use

(1) We shall grant our Customer a simple, non-exclusive and non-transferable right of use, anytime and anywhere, to our work results, which we performed during and while fulfilling our obligations to the Client in the context of the project and which we turned over to our Customer.

(2) The term work results shall include all work results produced individually for the Client, such as studies, designs, analyses, planning documents, business blueprints, program material (individual software and individual software adaptations to standard software) including any related documentation, databases, reports, drawings and similar materials, which shall be created by Lynx in written, machine-legible and/or another form in accordance with the scope of services agreed upon in the individual contracts.

5. Violations of Protection Laws

(1) Should the Client, due to his use of software that Lynx has licensed to him or otherwise made available to him for use, have claims made against him by a third party due to violation of copyrights, patent rights, trademarks or other commercial protection rights, Lynx shall release the Client from the claims of the third party at its own cost, provided that the Client held liable informs Lynx immediately of the claims in writing in the form of a registered letter (or comparable delivery with proof) and coordinates its further action with Lynx. The Client against whom the claim is made shall be required to support Lynx free of charge within reason, he shall ensure that all necessary and requested information is provided and authorize Lynx to take over the dispute with the third party out of court and, - to the extent it is legally permitted, - in court. The Client against whom the claim is made shall not recognize any claims related to violations of protection rights without the prior written consent of Lynx.

(2) To end the violation of the protection violation, Lynx may, at its sole discretion and taking into consideration the justified interests of the Client against whom a claim was made, either purchase the required rights of use for the Client against whom a claim was made, continue to use the software within the framework of the contractual agreement or replace or alter the software so that the rights of the third party shall no longer be violated.

(3) The obligations according to this paragraph shall not apply if the alleged violation of protection right is based on the following:

- (a) a modification of the software carried out without the express consent or approval of Lynx;
- (b) use of the software or the related user documentation by the Client in a manner other than the uses agreed upon in the respective contract;
- (c) connection, use or operation of the software together with other products not intended by Lynx or the licensor;
- (d) a refusal of the Client against whom a claim is made to install and use a more recent or modified version of the software or a replacement software, which Lynx has made available or offered to make available to the Client, even though such installation and use was reasonable, considering the interests of both parties.

III. Special Contract Terms and Conditions for the Provision of Contractual Services

1. Scope

These performance-specific Terms and Conditions contain, in addition to the General Contract Terms and Conditions from Section I, the specific rules for all (consulting) services, which Lynx-Consulting GmbH, Johanniskirchplatz 6, D-33615 Bielefeld, Germany, and the companies affiliated with Lynx-Consulting GmbH in accordance with §§ 15 ff. (hereinafter called "Lynx" or Company) shall provide for our Customers/Clients (hereinafter called "Clients").

Provided we are charged with the implementation (namely with the expansion, installation or introduction of systems including training) through our (consulting) services, our service-specific general business terms and conditions for software projects (in accordance with Section II) shall apply.

2. Implementation of (Consulting) Services

(1) We provide (Consulting) services in accordance with the principles of proper professional implementation of work by qualified employees. Our Customer shall bear the responsibility for the project and its success.

(2) Our Customer and we shall each name a contact partner that is responsible and can make decisions.

(3) To the extent that it is necessary for proper performance, the services to be performed shall be performed at the Client's place of business. Otherwise, the services shall be performed at Lynx.

(4) The selection of employees who provide the services shall be at our discretion.



3. Training

Training shall take place, at our discretion, at the Customer's or in coordination with our Customer at another site to be determined. If the training takes place at the Customer's, Customer shall make available, after coordinating with us, the respective rooms and technical equipment. Should the training take place at another site, the Customer shall rent the facilities and shall make the requisite hardware and software available on site.

We shall determine and prepare the training requirement(s) as well as prepare and conduct the training.

4. Term

(1) If the contract term is for an undetermined period of time, then it may be terminated with a notice of 3 months to the end of a calendar year. The first time a termination is possible shall be at the end of the calendar year following the year the contract is concluded. An agreed-upon minimum period of time shall not be affected by this right to termination.

(2) Termination without notice for good cause shall not be affected.

(3) Terminations need to be in writing.

5. Performance Disruptions

(1) In the event that we did not perform our services as contractually specified and are responsible for that (performance disruption) then we are obligated to perform the services in whole or in part without additional cost to our Customer within an appropriate period of time such as is contractually specified, provided this is possible and reasonable. With respect to our Customer's duty to observe and obligation to notify us of a defect we make reference to our General Terms and Conditions (in accordance with Section I).

(2) If we are not responsible for any services that potentially are not as contractually specified we shall, insofar as it is possible and reasonable, offer the contractual services to the Client at the Client's cost.

(3) Otherwise, with respect to claims for repayment of expenditures and claims for damages we make reference to our General Terms and Conditions (according to Section I).

