

# **Terms of Service**

## **BIConcepts IT Consulting GmbH**

**(As of 05/2024)**

### **1. Scope of contract and validity**

All orders and agreements are only legally binding if they are signed by BIConcepts IT Consulting GmbH in writing and in accordance with the company and are only binding to the extent specified in the order confirmation. The customer's terms and conditions of purchase are hereby excluded for the legal transaction in question and the entire business relationship.

Offers are generally non-binding. The offer is part of the contract. Subsidiary agreements are only legally valid if they are in writing. Cost estimates and offer documents from BIConcepts IT Consulting GmbH may not be made accessible to third parties.

### **2. Performance and testing**

#### **2.1. The subject of an order can be**

- Elaboration of organizational concepts
- Global and detailed analyzes
- Creation of individual programs
- Delivery of library (standard) programs

- Acquisition of usage authorizations for software products
- Acquisition of work usage permits
- Participation in commissioning (conversion support)
- Telephonic consultancy
- program maintenance
- Creation of program carriers
- Other services

## **2.2. Elaboration of concepts and programs**

The elaboration of individual organizational concepts and programs takes place according to the type and scope of the binding information, documents and resources made available in full by the client. This also includes practice-oriented test data as well as test options to a sufficient extent, which the client makes available in a timely manner, during normal working hours and at his own expense. If the client is already working in real operation on the system made available for testing, the responsibility for backing up the real data lies with the client.

## **2.3. Creation of individual programs**

The basis for the creation of individual programs is the written description of services that BIConcepts IT Consulting GmbH elaborates against a cost calculation based on the documents and information made available to it or that the client makes available. This service description must be checked by the client for correctness and completeness and provided with a note of approval. Change

requests occurring later can lead to separate date and price agreements.

#### **2.4. Software or program adaptations:**

Individually created software or program adaptations require a program acceptance for the respective program package concerned no later than four weeks from delivery by the client. This is confirmed in a protocol by the client. (Check for correctness and completeness based on the service description accepted by the contractor using the test data provided under point 2.2.). If the client allows the period of four weeks to pass without the program acceptance, the software supplied is deemed to have been accepted on the end date of the specified period.

If the software is used in real operation by the client, the software is deemed to have been accepted in any case.

#### **2.5. Corrective action**

Any defects that occur, i.e. deviations from the service description agreed in writing, must be reported by the client to BIConcepts IT Consulting GmbH in a sufficiently documented manner, which will endeavor to remedy the defect as quickly as possible.

If real operation cannot be started or continued, a new acceptance is required after the defect has been remedied. The client is not entitled to refuse acceptance of software due to minor defects. When ordering library (standard) programs, the client confirms knowledge of the scope of services of the ordered programs with the order.

## **2.6. Impossibility of execution**

Should it turn out in the course of the work that the execution of the order according to the service description is actually or legally impossible, BIConcepts IT Consulting GmbH is obliged to notify the client immediately. If the client does not change the service description to that effect or creates the prerequisite for execution to be possible, BIConcepts IT Consulting GmbH can refuse execution.

If the impossibility of execution is the result of a failure by the client or a subsequent change to the service description by the client, BIConcepts IT Consulting GmbH is entitled to withdraw from the order.

The costs and expenses incurred up to then for the activities of BIConcepts IT Consulting GmbH as well as any dismantling costs are to be reimbursed by the client.

## **2.7. shipment**

Program carriers, documentation and service descriptions are dispatched at the expense and risk of the client.

Any additional training and explanations requested by the client will be invoiced separately.

Insurance is only provided at the request of the client.

### **3. Prices, Taxes and Fees**

3.1. All prices are in euros and do not include sales tax and fees. They only apply to the present order. The prices quoted are from the registered office of BIConcepts IT Consulting GmbH. The costs of program carriers (e.g. CD's, DVDs, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes, etc.) will be invoiced separately.

3.2. For library (standard) programs, the list prices valid on the day of delivery apply. For all other services (organizational advice, programming, training, conversion support, telephone advice, etc.), the workload will be charged at the rates applicable on the day the service is provided. Deviations from a time expenditure on which the contract price is based, for which BIConcepts IT Consulting GmbH is not responsible, will be calculated based on the actual occurrence.

3.3. The costs for travel, daily and overnight allowances will be invoiced to the client separately according to the applicable rates. Travel times count as working time.

### **4. Delivery date**

4.1. BIConcepts IT Consulting GmbH endeavors to meet the agreed deadlines for fulfillment (completion) as precisely as possible.

4.2. The desired fulfillment dates can only be met if the client has completed all necessary work and documents on the dates specified by BIConcepts IT Consulting GmbH, in particular the service description accepted by him in accordance with point 2.3. makes available and fulfills his obligation to cooperate to the required extent. BIConcepts IT Consulting GmbH is not responsible for delays in delivery and cost increases caused by incorrect, incomplete or subsequently changed details and information or documents made available and cannot lead to BIConcepts IT Consulting GmbH being in default. The client bears any resulting additional costs.

4.3. In the case of orders that include several units or programs, BIConcepts IT Consulting GmbH is entitled to carry out partial deliveries or to issue partial invoices.

## **5. Payment**

5.1. The invoices submitted by BIConcepts IT Consulting GmbH including sales tax are payable no later than 14 days from receipt of the invoice without any deductions and free of charge. For partial invoices, the terms of payment specified for the entire order apply analogously.

5.2. In the case of orders that include several units (e.g. programs and / or training courses, implementation in partial steps), BIConcepts IT Consulting GmbH is entitled to issue an invoice after delivery of each individual unit or service.

5.3. Adherence to the agreed payment dates is an essential condition for the execution of the delivery or the fulfillment of the contract by BIConcepts IT Consulting GmbH. Failure to comply with the agreed payments entitles BIConcepts IT Consulting GmbH to stop the ongoing work and withdraw from the contract. All associated costs as well as the loss of profit are to be borne by the client.

5.4. In the event of default in payment, BIConcepts IT Consulting GmbH is entitled to charge default interest of 9% pa above the three-month Euribor. If two installments are not adhered to in the case of partial payments, BIConcepts IT Consulting GmbH is entitled to allow deadlines to come into effect and to make accepted acceptances due.

5.5. The client is not entitled to withhold payments due to incomplete total delivery, guarantee or warranty claims or complaints.

## **6. Copyright and Usage**

6.1. BIConcepts IT Consulting GmbH or its licensors are entitled to all copyrights to the agreed services (programs, documentation, etc.). The client only has the right to use the software after payment of the agreed fee exclusively for his own purposes, only for the hardware specified in the contract and to the extent of the acquired number of licenses for simultaneous use on several workstations.

All written and machine-readable work results created exclusively and directly for the customer such as programs, data carriers, lists and other program documentation belong to the customer subject to the following provisions:

BIConcepts IT Consulting GmbH is not prevented from developing software and allowing third parties to use it, which is similar to the software supplied to the customer. Inventions that are made within the scope of the agreed services and relate to data processing, as well as property rights granted to them, belong to the contractual partner with whom they were created.

BIConcepts IT Consulting GmbH transfers the exclusive rights of use to the computer programs created within the scope of the agreed services to the client without any time and place restrictions.

6.2. The client is permitted to make copies for archiving and data backup purposes on the condition that the software does not contain an express prohibition by the licensor or third parties and that all copyright and proprietary notices in these copies are transferred unchanged.

6.3. Should the disclosure of the interfaces be necessary for the production of interoperability of the software in question, this must be commissioned by the client to BIConcepts IT Consulting GmbH in return for a fee. If BIConcepts IT Consulting GmbH does not comply with this requirement and decompilation takes place in accordance with copyright law, the results are to be used exclusively to establish interoperability. Misuse results in damages.

## **7. Right of withdrawal**

7.1. In the event that an agreed delivery time is exceeded due to sole negligence or illegal action on the part of BIConcepts IT Consulting GmbH, the client is entitled to withdraw from the order in question



by means of a registered letter, even if the agreed service is not provided in essential parts within the appropriate grace period and to the client it is not at fault.

7.2. Force majeure, labor disputes, natural disasters and transport locks as well as other circumstances that are beyond the control of BIConcepts IT Consulting GmbH release BIConcepts IT Consulting GmbH from the delivery obligation or allow it to redefine the agreed delivery time.

7.3. Cancellations by the client are only possible with the written consent of BIConcepts IT Consulting GmbH. If BIConcepts IT Consulting GmbH agrees to a cancellation, it has the right to charge a cancellation fee of 30% of the not yet invoiced order value of the entire project in addition to the services provided and costs incurred.

## **8. Warranty, maintenance, changes**

8.1. The warranty period begins on the day of installation and is 12 months. Notices of defects are only valid if they concern reproducible defects and if they are made within 4 weeks of delivery of the agreed service or, in the case of individual software, after program acceptance in accordance with point 2.4. documented in writing. In the case of a guarantee, improvement has priority over price reduction or conversion. If the notification of defects is justified, the defects will be remedied within a reasonable period of time, whereby the client enables BIConcepts IT Consulting GmbH to take all measures necessary for the investigation and remedial action. The presumption of deficiency according to § 924 ABGB is excluded.

8.2. Corrections and additions that prove necessary up to the handover of the agreed service due to organizational and program technical deficiencies for which BIConcepts IT Consulting GmbH is responsible will be carried out free of charge by BIConcepts IT Consulting GmbH.

8.3. BIConcepts IT Consulting GmbH carries out costs for assistance, misdiagnosis as well as error and fault elimination for which the client is responsible, as well as other corrections, changes and additions. This also applies to the rectification of defects if program changes, additions or other interventions have been made by the client himself or by a third party.

8.4. Furthermore, BIConcepts IT Consulting GmbH assumes no liability for errors, malfunctions or damage due to improper operation, changed operating system components, interfaces and parameters, use of unsuitable organizational resources and data carriers, insofar as these are prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) as well as damage in transit.

8.5. For programs that are subsequently changed by the client's own programmers or by third parties, any guarantee by BIConcepts IT Consulting GmbH does not apply.

8.6. Insofar as the subject of the order is the change or addition to existing programs, the warranty relates to the change or addition. The guarantee for the original program is not revived.

## **9. Standard software**

9.1. In return for a one-time license fee, the licensee (client) receives the unlimited right to use the standard software under the terms of use defined in the order.

9.2. All standard software products delivered by BIConcepts IT Consulting GmbH remain the property of BIConcepts IT Consulting GmbH. The client is only entitled to personal use. Unless otherwise agreed in writing, the programs may not be made accessible to third parties.

The licensee (client) is not entitled to make changes to the standard software without the consent of BIConcepts IT Consulting GmbH.

In the event that the customer passes on the product without the consent of BIConcepts IT Consulting GmbH, BIConcepts IT Consulting GmbH releases from the obligation to provide further contractually agreed services. In this case, the client undertakes to pay a contractual penalty of EUR 50,000.00, which is not subject to the judicial right of moderation.

9.3. BIConcepts IT Consulting GmbH reserves the right to change, further develop, improve or replace the standard software programs with new developments. If we make a newer program version available to licensees with whom we have not concluded an additional maintenance contract, this is only done through an additional fee. BIConcepts IT Consulting GmbH then only takes over guarantee that the changed program parts are free from defects. If new program versions are made available without additional charge, any warranty is void.

## **10. Liability**

The contractor is liable for damage, if gross negligence can be proven, up to the amount of the order value of the order in which the damage was caused.

BIConcepts IT Consulting GmbH is liable for damages, if their intent or gross negligence can be proven, up to the amount of the order value of the order in which the damage was caused. Liability for slight negligence is excluded.

Compensation for consequential damage and financial loss, savings not achieved, loss of interest and damage from third party claims against BIConcepts IT Consulting GmbH is excluded in any case, as far as legally permissible.

## **11. Loyalty**

The contractual partners commit themselves to mutual loyalty. You will refrain from any enticement or employment, including through third parties, of employees who have worked on the implementation of the orders of the other contractual partner for the duration of the contract and 12 months after the end of the contract.

The contractual partner who violates this is obliged to pay lump-sum compensation in the amount of an employee's annual salary.

## **12. Data protection, confidentiality**

BIConcepts IT Consulting GmbH obliges its employees to comply with the provisions of Section 15 of the Data Protection Act.

## **13. Other**

Should individual provisions of this contract be or become ineffective, this shall not affect the rest of the content of this contract. The contractual partners will work together in partnership to find a regulation that comes as close as possible to the ineffective provisions.

## **14. Final provisions**

Unless otherwise agreed, the statutory provisions that apply between registered traders apply exclusively under Austrian law, even if the order is carried out abroad. For any disputes, only the local jurisdiction of the relevant court for the business location of BIConcepts IT Consulting GmbH is agreed. For sales to consumers within the meaning of the Consumer Protection Act, the above provisions only apply insofar as the Consumer Protection Act does not necessarily provide for other provisions.