

# CONTRACTUAL TERMS FOR SOFTWARE DEVELOPMENT

- STACKFORCE GMBH -

## 1 SUBJECT MATTER OF THE CONTRACT

- 1.1 STACKFORCE GmbH shall develop software for the customer in accordance with the service description (see Item 2.2) underlying the concluded contract.
- 1.2 The software to be submitted to the customer by STACKFORCE GmbH contains only an executable form or a software library, while a software library can consist of a precompiled program code, source code or both, unless agreed or delivered otherwise.
- 1.3 The software or components of the software that are not provided as source code, shall be provided together with an operating manual (user documentation and/or online help). The operating manual shall be drafted in English or German, unless agreed otherwise.  
  
Supply or creation of further documentation requires a separate written agreement, in particular, on the content and scope of the documentation.
- 1.4 STACKFORCE GmbH shall create the software and the operating manual (jointly: deliverables) in compliance with the principles of professional conduct.
- 1.5 Analysis, planning, consulting and training services are not the subject matter of this contract and are not owed by STACKFORCE GmbH.

## 2 COLLABORATION BETWEEN THE CONTRACTUAL PARTNERS

- 2.1 The customer shall notify STACKFORCE GmbH of the technical and functional requirements for the software in full and in detail, and supply STACKFORCE GmbH in a timely manner with all documents, information and data required for software development. This also includes a description of practical and suitable test cases and data for validation of attributes (Item 7.1).
- 2.2 The service description shall finally convey the required software attributes. The service description shall only be amended in accordance with Item 3. STACKFORCE GmbH shall render analysis, planning and consulting services, also in connection with the service description, only on the basis of a separate contract in exchange for separate remuneration (also see Item 1.5).
- 2.3 STACKFORCE GmbH shall engage the customer's designated contact person (Item 2.1 of the General Terms and Conditions (GTC)) - as a project manager, insofar as required for

contract execution. The decisions made by the contact persons must be documented in writing.

2.4 The customer has no claim to service provision at their own premises.

### 3 PROCEDURE FOR CHANGES TO SERVICES

Both contractual partners can recommend changes to the service description (Item 2.2) and service provision. The following procedure is agreed for this:

- 3.1 STACKFORCE GmbH shall preview the customer's recommendation for change and inform them whether or not a detailed assessment of this recommendation is necessary.
- 3.2 If a detailed assessment of the recommendation for change is necessary, STACKFORCE GmbH shall inform the customer in a timely manner about the expected, necessary period of time and the remuneration. The customer shall accept or reject the assessment mandate within a reasonable period of time.
- 3.3 If a detailed assessment of the recommendation for change is not necessary or the mandated assessment has been completed, STACKFORCE GmbH shall either
  - a) submit a written offer concerning implementation of the changes (change offer) to the customer. The change offer encompasses, in particular, amendments to the service description and their effects on the service period, planned deadlines and remuneration, or
  - b) inform the customer that the recommendation for change cannot be implemented within the scope of the agreed services for STACKFORCE GmbH.
- 3.4 The customer shall either reject a change offer within an acceptance period specified therein (binding period) or declare acceptance in writing or another form agreed between the contractual partners. The customer shall promptly notify STACKFORCE GmbH of any rejection.
- 3.5 STACKFORCE GmbH and customer can agree that services affected by a recommendation for change be interrupted until the end of the assessment, or - if a change offer is submitted - until expiry of the binding period.
- 3.6 Until an offer for change is accepted, work shall continue on the basis of the previous contractual agreements. The service periods are extended by the number of calendar days in which work was interrupted in connection with the recommendation for change or its assessment. STACKFORCE GmbH can request a reasonable remuneration for the duration of the interruption (Item 3.5), unless STACKFORCE GmbH uses their employees affected by the interruption in a different way or willfully refrains from use.
- 3.7 On request by STACKFORCE GmbH, the change procedure is to be documented in writing or in text on one of STACKFORCE GmbH's forms, unless agreed otherwise. Any modification to the service description shall be agreed in writing or another form by the contractual partners.

- 3.8 Items 3.2 through 3.7 apply accordingly to STACKFORCE GmbH's recommendations for change.
- 3.9 Recommendations for change must be addressed to the contractual partner's contact person (Item 2.3).

## 4 RIGHTS OF USE AND PROTECTION AGAINST UNAUTHORIZED USE

- 4.1 On full payment of the owed remuneration, STACKFORCE GmbH shall grant the customer a non-exclusive right to use the deliverables within their enterprise in perpetuity, within the contractually intended scope of use, unless agreed otherwise. Transfer of rights of use to third parties is only permitted if the customer completely relinquishes these rights. The customer undertakes to impose the obligations and restrictions of use relevant to them on the third party. This applies especially to the obligations as set forth in Item 5.8. On STACKFORCE GmbH's request, the customer shall confirm relinquishment of own use in writing.
- 4.2 If the software is software to be embedded, the customer is entitled to incorporate the software to be embedded to the customer's own software and products and to market and promote as well as distribute the software as part of the products of the customer's buyers and business partners.

STACKFORCE GmbH hereby grants the customer the right to grant the customer's buyers and business partners a non-revocable right to use the software incorporated in the customer's own products sold to the latter (sublicense).

Therefore, the customer and the customer's buyers and business partners agree on terms by their discretion, provided however, that the use of the incorporated software shall be subject to the restrictions set forth in this agreement and shall not derogate, in any respect, from STACKFORCE GmbH's rights.

The termination of this agreement shall not effect, in any way, any right to use the software incorporated to own software or products granted by the customer to the customer's buyers and business partners.

- 4.3 Otherwise, all rights remain with STACKFORCE GmbH.
- 4.4 STACKFORCE GmbH is authorized to take appropriate technical measures to prevent use contrary to the contract. Use of the software in an alternative or subsequent configuration must not be significantly affected by this.
- 4.5 The customer may only copy software if this is necessary for use according to the contract. The number of copies complies with the contractual agreed number, whereas one license

is equivalent to one copy if not agreed otherwise. Copyright notices in the software may not be changed or deleted.

- 4.6 STACKFORCE GmbH can revoke the customer's right of use if they significantly breach the restrictions of use or other rules on preventing unauthorized use (see also Item 5.8). STACKFORCE GmbH shall set a grace period of remedy for the customer beforehand. In the event of recurrence and in special circumstances which justify immediate revocation, bearing in mind the interests of both sides, STACKFORCE GmbH can also declare revocation without setting a deadline. After revocation, the customer shall give STACKFORCE GmbH written confirmation that use has been suspended. STACKFORCE GmbH shall restore rights of use for the customer after they have submitted and assured in writing that there are no more breaches of these rights of use, and previous breaches as well as their consequences have been eliminated.

## 5 CUSTOMER'S OBLIGATIONS

- 5.1 The customer shall ensure that specialist staff are available for supporting STACKFORCE GmbH during the project, for validation of attributes (Item 7.1) following handover, and for deployment of the software.
- 5.2 At STACKFORCE GmbH's request, the customer shall supply suitable test cases and data for validation of attributes in a machine-readable form (see Item 2.1). If the customer fails to supply such test cases and data, STACKFORCE GmbH may select and develop suitable test cases independently in exchange for additional remuneration.
- 5.3 The customer undertakes to download software provided for this after notification of availability.
- 5.4 The customer shall report defects, especially as set forth in Item 2.4 of the GTC. STACKFORCE GmbH's relevant forms and procedures shall be used for this purpose, unless agreed otherwise.
- 5.5 The customer shall support STACKFORCE GmbH to the extent necessary during contract execution and rectification of defects as per Item 2.2 of the GTC, and supply other analysis material.
- 5.6 The customer shall promptly inform STACKFORCE GmbH about any changes in operating conditions following handover.
- 5.7 Unless agreed otherwise, the customer shall additionally store, at their premises, all documents, information and data submitted to STACKFORCE GmbH in such a way that these can be reconstructed using data media in the event of damage or loss.
- 5.8 The customer must not undertake anything which might facilitate unauthorized use. In particular, the customer must not attempt to decompile software unless they are authorized to do so. The customer shall promptly inform STACKFORCE GmbH if said customer becomes aware that unauthorized access is imminent or has occurred in their sphere.

## 6 HANDOVER AND TRANSFER OF RISK

- 6.1 Unless agreed otherwise, STACKFORCE GmbH may also supply the customer with deliverables via electronic transmission or as downloads. If deliverables are made available as downloads, STACKFORCE GmbH shall notify the customer of this.
- 6.2 Insofar as deliverables are submitted electronically, the risk of accidental loss is transferred to the customer on receipt by the telecommunications operator which STACKFORCE GmbH has tasked with forwarding.
- 6.3 Insofar as deliverables are made available for downloading, the risk of accidental loss is transferred to the customer on availability and related notification for said customer.

## 7 VALIDATION OF ATTRIBUTES AND CUSTOMER'S CLAIMS DUE TO DEFECTS

- 7.1 The customer shall examine all supplied deliverables, in particular, software or executable software components agreed as partial deliveries, immediately - as a rule within 14 calendar days - for absence of defects and, in particular, presence of the contractually agreed attributes (validation of attributes). To this end, the customer shall use test cases and data practical and suitable for the software (see Item 2.1). STACKFORCE GmbH can perform coordination with the customer as regards test procedures, besides attending and supporting the validation of attributes on-site.
- 7.2 Defects occurring during or after validation of attributes will be reported duly by the customer without delay, but no later than seven calendar days from discovery (Item 5.4).
- 7.3 Applicable additionally is the commercial examination and defect notification obligation (§ 377 of the German Commercial Code).
- 7.4 STACKFORCE GmbH shall guarantee that the deliverables possess the contractually agreed attributes during contractually compliant use. Item 4 of the GTC applies additionally to material defects. Item 5 of the GTC applies additionally to defects of title. § 650 Paragraph 2 of the German Civil Code remains unaffected.
- 7.5 The customer may assert claims due to defects only if the reported defects can be reproduced or proven in another way. Items 5.4, 7.2 and 7.3 apply, in particular, to reporting of defects.
- 7.6 If the customer is entitled to claims due to defects, said customer initially only has a right to supplementary performance within a reasonable period. Supplementary performance includes, at STACKFORCE GmbH's discretion, either remedy or production of a new deliverable. The customer's interests are to be considered adequately in the choice.

The customer shall enable installation and removal for STACKFORCE GmbH in the scope of supplementary performance, unless this is unreasonable for the customer. Before taking own measures to remedy defects, the customer shall consult STACKFORCE GmbH.

Any entitlement of the customer's to reimbursement of expenditure is limited to a reasonable extent, taking into consideration the value of the relevant performance in faultless condition and the significance of the defect.

- 7.7 If supplementary performance fails or cannot be implemented for other reasons, the customer can reduce remuneration in accordance with legal requirements, rescind the contract and/or request compensation for damages or expenditures - within the scope of Item 6 of the GTC.

If supplementary performance is delayed, Item 3.4 of the GTC applies to STACKFORCE GmbH's compensation for damages and expenditures. Item 6 of the GTC applies, in particular, to compensation for damages and expenditures.

The customer shall exercise a right of choice to which they are entitled regarding these claims due to defects within a reasonable period, generally within 14 calendar days from the time of being able to realize the customer's right of choice.

## 8 VALIDITY OF GENERAL TERMS AND CONDITIONS

STACKFORCE GmbH's General Terms and Conditions (GTC) apply additionally.

This document is a courtesy translation. The German version of these terms shall be the legally binding version.