

qbilon GmbH Contractual Terms for Services

Sec. 1 Scope of Application

The following contractual terms (hereinafter: the “Terms for Services”) apply to agreements with customers for services in the form of consulting contracts.

Sec. 2 Subject-Matter of Terms

(1) The subject-matter of these Terms for Services are consulting services in the field of software solutions for the automated capture, monitoring and analysis of the Customer’s IT landscape in accordance with the bundles and/or performance components set out in detail in the offer.

(2) In addition to general consulting, the consulting services include planning, the draft and implementation according to the consulting contract.

(3) The basis of the cooperation and an integral part of these Terms for Services is the relevant offer issued by qbilon GmbH, which regulates details of the agreement on services.

(4) Where project meetings are verbal, qbilon GmbH shall take minutes about the discussion conducted and shall make them available to the Customer within 2 working days. The minutes shall become an integral part of the cooperation or of an agreement unless the Customer raises objections to them within 2 working days. Where minutes are not deemed necessary, the offer drawn up by qbilon GmbH and accepted by the Customer shall constitute the basis of the contractual cooperation. Where agile projects are concerned, the final time schedule prepared at the project kick-off shall constitute the basis. The current schedule shall then be shared within the context of regular meetings via the relevant contact partner appointed.

(3) Modifications of the offer, the order, the scope and contents of performance, the assignment, the mode of procedure and the nature of work results have to be set out in writing. qbilon GmbH shall take a modification request from the Customer into account insofar as it can reasonably be expected to do so within its operational capacities, especially as regards the effort and time

scheduling. Any additional costs thus incurred shall be borne by the Customer.

(4) Until modifications have been set out in writing, qbilon GmbH shall perform the work without taking modification requests of the Customer into account. Corresponding notification by e-mail shall satisfy the requirement of written form.

(5) The preparation of a comprehensive written report by qbilon GmbH, especially for presentation to third parties, has to be agreed separately in advance.

(6) qbilon GmbH is entitled to deploy third parties in order to provide its performance.

(7) Events of force majeure that severely hamper or temporarily make performance impossible and impediments caused by a lack of cooperation by the Customer shall entitle qbilon GmbH to delay its performance by the duration of the impediment plus a reasonable ramp-up period. Industrial action and similar circumstances are equated to force majeure insofar as they are unforeseeable and severe. The occurrence of such circumstances shall be notified to the other party respectively without undue delay.

Sec. 3 Provision of Services

(1) As regards analytical and conceptual consulting services, performance by qbilon GmbH shall be deemed to have been provided when it has conducted the requisite analyses and drawn up the resulting conclusions, concepts or recommendations and explained these to the Customer. It is irrelevant whether or when the conclusions and/or recommendations are implemented.

(2) In all other cases the performance shall be deemed to have been provided as soon as the subject-matter of performance is made available to the Customer by qbilon GmbH.

Sec. 4 Deadlines

(1) Deadlines for the provision of performance may be affirmed on the part of qbilon GmbH solely by the expressly appointed contact partners.

(2) Deadlines where failure to comply means that one contracting party defaults according to Sec. 286(2), German Civil Code (BGB), without a warning notice being required (binding deadlines), shall always be agreed in writing and designated as being binding.

Sec. 5 Customer's Cooperation Obligations

(1) The Customer agrees to use its best efforts to support qbilon GmbH in fulfilment of its contractually owed performance and shall create the conditions required within its operational environment for proper implementation of the project. This includes, in particular, the making available in due time of all necessary information, data material, hardware and software required insofar as required for the cooperation to be provided by the Customer. The Customer shall inform qbilon GmbH promptly about all circumstances that arise during the implementation of the project and that could influence the handling of the project.

(2) At the request of qbilon GmbH, the Customer shall provide written confirmation of the accuracy and completeness of the documents it has presented and of the information and verbal declarations it has issued.

(3) Insofar as necessary the Customer shall make its own employees available, sufficient in number and professional qualifications, within the context of implementation of the project.

(4) Where the Customer has agreed to provide images, sounds, text and similar material to qbilon GmbH for implementation of the project, the Customer shall make such items available to qbilon GmbH as fast as possible in a common, directly utilizable digital format. Should conversion of the data provided into a different format be necessary, against payment, the Customer shall bear the relevant costs incurred. The Customer shall also ensure that it holds the rights for use of such material and that qbilon GmbH receives the use rights within the context of implementation of the project.

(5) Acts of cooperation shall be performed by the Customer at its own expense.

(6) The Customer shall involve and commission other service providers in connection with this project solely in agreement with qbilon GmbH.

(7) The Customer shall assume responsibility for third parties that act at its instigation or with its toleration within the area of responsibility of qbilon GmbH, as it would for vicarious agents. qbilon GmbH is not responsible to the Customer if, due to the conduct of such a third party, it is unable to fulfill its contractual obligations towards the Customer in whole, in part or in due time.

(8) The Customer agrees not to employ or commission any employees or former employees of qbilon GmbH who were deployed in connection with implementation of the project, until at least 12 months have passed since termination of the cooperation. The Customer shall pay to qbilon GmbH a contractual penalty amounting to the gross monthly salary most recently paid to the relevant employee or the most recently paid monthly fee, for each culpable breach on the part of the Customer.

(9) Failure by the Customer to comply with one of the terms under Clause 5 hereof or with another duty, then having set a reasonable grace period qbilon GmbH shall be entitled to terminate the contract. qbilon GmbH shall retain the claim for the fee while taking into account the provisions in Sec. 642(2), German Civil Code (BGB). The claims of qbilon GmbH for compensation for the additional expenses incurred due to default or the Customer's failure to cooperate and for damage caused shall also remain unaffected, even where qbilon GmbH does not exercise its right of termination.

Sec. 6 Remuneration and Terms of Payment

(1) The Customer shall pay the agreed fee. Subject to divergent provisions, the claim shall be due for payment 30 days after the invoice is issued.

(2) All prices mentioned are subject to VAT - insofar as payable - at the relevant statutory rate in force. Any customs duties and similar duties for delivery abroad shall be borne by the Customer.

(3) qbilon GmbH will not assume the costs of a money transaction through which the Customer fulfills its obligation to pay the fee.

(4) A discount deduction is only permitted on the basis of a separate written agreement. Divergent individual agreements shall take precedence.

(6) Without contractual limitation under the statutory regulations, the Customer may set-off claims for non-performance or claims based on defects arising under the agreement and aimed at payment, against the claim of qbilon GmbH for payment of the fee. Claims other than those mentioned in sentence 1 may only be set-off by the Customer against claims accruing to qbilon GmbH insofar as they are undisputed or have been established with final force.

(7) The Customer is authorized to exercise a right of retention only insofar as its counterclaim is based on the same contractual relationship.

Sec. 7 Liability

(1) qbilon GmbH is liable without contractual limitations according to the statutory provisions,

a) for intent;

b) for damage caused by fraudulent concealment of a defect in the software by qbilon GmbH or where qbilon GmbH assumed a warranty for the qualities of the software;

c) for damage based on injury to life, limb or health caused by an intentional or negligent breach of duties by qbilon GmbH or caused by other intentional or negligent conduct by a statutory representative or vicarious agent of qbilon GmbH;

d) for damage caused by an intentional or grossly negligent breach of duties by qbilon GmbH or caused by other intentional or grossly negligent conduct by a statutory representative or vicarious agent of qbilon GmbH;

(e) under the German Product Liability Act (*Produkthaftungsgesetz*);

(2) In cases other than those indicated in para. 1 the liability is limited to compensation for foreseeable damage typical of this kind of contract insofar as the damage is caused by a negligent breach of material contractual obligations by qbilon GmbH or by a statutory representative or vicarious agent of qbilon GmbH. Material contractual obligations are obligations the fulfillment of which enables the proper performance of the contract in the first place and on satisfaction of which the Customer generally relies and is entitled to rely.

(3) In cases other than those mentioned in paras. 1 and 2 the liability of qbilon GmbH for negligence is excluded.

(4) The defence of contributory negligence shall remain unaffected.

(5) The above provisions on the liability of qbilon GmbH for damages apply to all contractual and non-contractual claims for damages against qbilon GmbH irrespective of their legal basis and apply accordingly to the liability of qbilon GmbH for compensation for futile expenses.

(6) The following also applies without limiting the above provisions:

Where documents, electronic data and/or programs are made available to qbilon GmbH within the context of providing performance, qbilon GmbH shall not be liable insofar as the damage was caused by the Customer's failure to make corresponding copies and/or data backups, thus ensuring that lost documents and data can be retrieved and/or restored with reasonable effort.

The risk regarding the lawful nature of project measures taken shall be borne by the Customer. This applies especially where measures are in breach of the provisions of competition or copyright law, or of the specific laws governing advertising. However, qbilon GmbH shall point out legal risks insofar as it expressly becomes aware of them during preparations. The Customer shall indemnify qbilon GmbH against claims of third parties if qbilon GmbH acted upon the express request of the Customer although it had notified the Customer about its reservations regarding the lawful nature of the project measures.

On no account shall qbilon GmbH be liable for factual statements made within the project measures about products or services of the Customer. qbilon GmbH shall not be liable either for the eligibility for patent, copyright or trademark registration or protection of the ideas, proposals, suggestions, concepts and drafts etc. arising within the context of the contract.

Sec. 8 Protection of Industrial and Intellectual Property, Use Rights

(1) The reports, plans, drafts, analyses, concepts, compilations, calculations compiled, and other performance provided by qbilon GmbH may only

be used for the contractually agreed purposes. Any use not covered by the contract, especially reproduction, publication, rental or other exploitation, is subject to the prior written authorization of qbilon GmbH. This also applies where the performance provided is not the subject-matter of specific statutory rights, especially of copyrights. Where software is the subject-matter of the performance, the provisions of Secs. 69d and 69e of the German Copyright Act (UrhG) apply.

(2) The Customer shall not receive the unrestricted right to use performance provided until the invoice has been paid in full. The Customer's permission to use or deploy the performance provided can be revoked until the invoice has been paid in full. If the Customer defaults on payment of the invoice, qbilon GmbH is entitled to revoke permission to use or deploy the performance with regard to which the Customer has defaulted, for the entire default period.

(3) In case of a breach of the provisions in Clause 8(1) hereof, qbilon GmbH shall be entitled to an additional fee of a reasonable amount based on the circumstances.

Sec. 9 Commencement, Term and Termination of the contract

(1) Unless otherwise agreed, the contractual term shall commence when the Customer awards the relevant commission.

(2) The contract shall end upon provision in full of the agreed services, unless otherwise agreed.

(3) The contracting parties may only extend the contractual term by mutual agreement.

(4) Ordinary termination of the contract is not possible. The right to terminate the contract with immediate effect for good cause is not excluded or restricted by these Terms for Services.

(5) A notice of termination has to be in writing in order to be valid.

Sec. 10 Right of Retention and Obligation to Keep Documents and Material

(1) qbilon GmbH has a right of retention regarding the documents and material provided to it, until its outstanding amounts have been paid in full.

(2) After its claims under the contract/order have been settled, qbilon GmbH shall surrender all documents and material that the Customer or a third party provided to it by reason of performance of the order. This shall not apply to correspondence between the parties or to ordinary copies of the reports, plans, drawings, concepts, compilations, calculations etc. drawn up within the context of the order, insofar as the Customer received the originals.

(3) The obligation of qbilon GmbH to keep the documents and material shall lapse 6 months after service of a written demand for collection, and otherwise 3 years after the contractual relationship ends.

Sec. 11 Confidentiality

(1) The contracting parties agree to keep confidential the contents of these Terms for Services and all information obtained.

(2) qbilon GmbH agrees to keep secret the information it obtains within the context of the services about the Customer's IT infrastructure, the IT security settings, users and data traffic, and not to further process such information. Information contained in qbilon Ultimate shall only be accessed and used when commissioned by and in the presence of a contact partner of the Customer; such information may not be copied or stored by qbilon GmbH. Such information shall also remain confidential after the cooperation ends. qbilon GmbH agrees to impose a corresponding confidentiality obligation on every person who is involved in the provision of consulting services. Information that has been publicly disclosed or where the Customer has consented to it being forwarded is exempt from the confidentiality obligation.

(3) The Customer agrees that the contents of these Terms for Services and of the performance arising within the context hereof may be stored electronically and processed by qbilon GmbH in compliance with data protection provisions. Both contracting parties agree not to forward electronically stored and other data to third parties that have no direct connection with implementation of the project.

Sec. 12 Mentioning Reference Customers

qbilon GmbH is entitled to mention the Customer as a reference customer together with its company name and logo, on qbilon GmbH's website and social media channels.

Sec. 13 Final Provisions

(1) The Customer is not entitled to assign or transfer claims and/or obligations under these Terms for Services in whole or in part or to transfer these Terms for Services in their entirety to a third party without the prior written consent of qbilon GmbH.

11.2. These Terms for Services reflect the entire contractual relationship between the parties with regard to their subject-matter. There are no oral covenants between the parties. Terms of purchase and standard terms and conditions of the Customer that diverge from or conflict with these Terms for Services shall not apply; this also applies where qbilon GmbH does not explicitly object to such terms of the Customer.

11.3. Amendments and supplements to as well as termination of this contract have to be in writing. This also applies to the amendment or waiver of this clause on written form.

11.4. The contractual relationship between the parties and any disputes arising from or in connection with this contractual relationship are governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

11.5. The exclusive venue for all disputes arising from or in connection with the contractual relationship between the parties is Augsburg, Germany.

11.6. Should one or more provisions of these Terms for Services be or become invalid, this shall not affect the validity of the remaining provisions hereof. The parties shall work together in order to replace invalid provisions with valid provisions that come as close as possible to the invalid provisions. The same applies in case of a gap in these Terms for Services.