

General Terms and Conditions for the Provision of Services

A. General Terms and Conditions for all Services

§ 1 Subject Matter

1. These General Terms and Conditions for the Provision of Services (hereinafter referred to as "GTC") apply to the provision of professional services and services provided under a contract for work (hereinafter referred to as "Services") by evocortex GmbH (hereinafter referred to as "evocortex") to corporate customers (hereinafter referred to as "Customers"). In addition, the provisions set forth in Part B of these GTC (§§ 12 et seq. below) shall apply to the provision of Services under a contract for work (*Werkvertrag*).
2. In the event the parties also agree on the delivery and licensing of standard software, the evocortex General Terms and Conditions for the Provision and Licensing of Standard Software shall apply in addition to these GTC.
3. These GTC in their current version also apply to all future agreements on the provision of Services entered between evocortex and Customer, including all cases where they are not explicitly referred to.
4. The type and manner of the Services and the delivery dates and consideration shall be specified in detail in individual contracts in which reference is made to these GTC. In case of a conflict, the individual contract and provisions contained in other customer-specific contract documents (e.g., in the commercial offer submitted by evocortex) shall take precedence over the GTC. General terms and conditions of Customer do not apply, even if evocortex provides Services without objecting to them.
5. Offers submitted by evocortex are subject to change without notice and non-binding, unless they are referred to as binding in writing. Customer agrees to be bound by its statements regarding the conclusion of a contract for a period of four (4) weeks.

§ 2 Performance of Services

1. Unless agreed otherwise, Customer will be responsible for project organization and project planning (including coordination of other service providers) and for the reporting and time management. Customer will bear the overall responsibility for the realization of the project in a skillful manner, in time and budget. Technical specifications issued by Customer need to be confirmed by evocortex in writing.
2. evocortex shall perform the agreed Services based on the state of the art. evocortex shall perform all Services carefully and use skilled and trained employees. evocortex has the right to assign, in its own discretion, either its own employees or sub-contractors with the provisions of Services. Irrespective of the place of performance, employees of evocortex are not subject to the supervision and instructions by Customer and will not be deemed to be employed by Customer. In the event employees are named (e.g., in an individual contract), this information is provided based on the information and planning state at the time the contract is concluded. In the event it should become necessary to replace staff, evocortex shall ensure that they possess comparable skills and training. Customer has the right to demand employees to be replaced for important reasons. In this case, Customer will bear the expenses for the initial training of the new employee.
3. If necessary, evocortex shall agree with Customer on a project plan and schedule and update these documents, if required. Upon request, evocortex shall notify Customer of the state of project work. evocortex may prepare minutes of joint discussions regarding the further specification or modification of contract details, in particular, with regard to the subject matter of the agreement, project schedule

and compensation. The minutes shall become binding on both parties when evocortex makes them available to Customer and Customer does not object to them in writing within one (1) week from their receipt, giving a reason for its objection. evocortex shall include a notice regarding this effect.

4. Either party shall designate a contact person in the individual contract. This contact person is authorized to make and receive any statement that may be required in connection with the performance of the agreement and to make the necessary decisions. The parties shall replace their contact persons only for important reasons and shall promptly notify the other party of such replacement.

§ 3 Modification of Services

1. In the event Customer wishes to change, modify or amend its requirements/scope of Services, evocortex shall review the change request and submit a corresponding offer to Customer. evocortex has the right to refuse performance of the change request, if the requested modification or extension is not feasible or if evocortex cannot reasonably be expected to perform it due to its operational capacity or for other objective reasons.
2. In the absence of other agreements, evocortex may claim compensation on a time and materials basis for reviewing the change request and for preparing a supplementary quotation based on the then-valid evocortex price list. Unless otherwise provided in a contract amendment, the agreed performance periods shall be extended by that period during which the contractual work had to be suspended due to the change request, plus a reasonable period to resume contract performance.

§ 4 Customer's Duty to Cooperate

1. Customer shall cooperate with evocortex in time, properly and fully as described in the following clauses and in the individual contract and, if necessary, contribute to the project in any other way. This cooperation will be free of charge and shall be deemed a material contract duty of Customer. Customer shall ensure that its employees possess the necessary skills, training and experience for the services to be contributed to the project and shall release them from their other tasks to the extent required for this project.
2. Customer shall provide - to the extent required - staff, complete and unequivocal data and documents, the necessary IT infrastructure, telecommunications equipment, test cases, test data and a test environment and shall assist evocortex in specifications and testing. Customer shall make available a workplace with a PC, internet access and a phone to evocortex employees who perform services at Customer's site.
3. Customer shall ensure that any pre-requisites are met at its facilities that are required for due contract performance. In particular, Customer shall allow evocortex access to its hardware and software to the extent required during the entire contract term. Customer shall ensure that third-party products (hardware, software, databases, etc.) that are required for the provision of the Services are available and duly licensed. Customer is responsible for ensuring the proper operation and availability of the third-party products (including access and modification rights for evocortex, if required), if necessary, by entering corresponding license and maintenance agreements with the third-party producers or suppliers.
4. Customer shall coordinate services provided by third parties that are related to the Services to be provided by evocortex in such a manner that delays, waiting time and/or additional expenses on the part of evocortex are avoided.

5. In connection with its duty to prevent and minimize damages, Customer shall take the appropriate pre-cautions (e.g., by backups and inspection of its IT systems at regular intervals) and shall ensure that in case of a total failure of its IT systems its systems will be available for uninterrupted emergency operations at any time by establishing a corresponding emergency concept and emergency plans. In the absence of an express written notice in a particular situation, evocortex employees as well as staff of any subcontractors assigned by evocortex may always assume that any data with which they will come into contact has been sufficiently backed-up by Customer.
6. Waiting and downtime and additional expenses incurred by evocortex due to delays, non-compliance or insufficient compliance with the duty to cooperate on the part of Customer will be charged to Customer on a time and materials basis. In the event cooperation duties to be met by Customer are performed by evocortex instead upon the fruitless expiration of a reasonable grace period granted for them, in the event of imminent danger even without such grace period, evocortex will be compensated for the additional expenses incurred on a time and materials basis. Any other claims of evocortex remain unaffected.

§ 5 Confidentiality and Data Protection

1. The parties agree to treat any business and trade secrets as well as other business-related information of the other party that are disclosed to them, made available to them or of which they may become aware in any other manner as strictly confidential. They shall use such information only for the purpose specified in the individual contract and shall not disclose it to third parties. The parties shall allow only those employees and sub-contractors access to this confidential data that have a need to know them for performing the individual contract. The confidentiality duty shall survive termination or expiration of the individual contract for a period of three (3) years.
2. The duty of confidentiality does not apply to confidential information that was previously known to the receiving party without any duty of confidentiality or that is or will become known to the general public through no fault on the part of the receiving party, or which is rightfully disclosed to the receiving party by a third party without being bound by a duty of confidentiality, or that can be shown to have been independently developed by the receiving party.
3. The parties agree to duly store any business items and records made available to them and to return them at any time upon the other party's request. In particular, they shall ensure that unauthorized third parties cannot gain access to them.
4. To the extent personal data is processed, evocortex shall bind the assigned employees to data secrecy by a written declaration prior to their assignment. evocortex has the right to transfer personal data to subcontractors that are commissioned in accordance with the agreement, if such a transfer is required for performing the corresponding Services ordered. evocortex shall bind the subcontractor to data secrecy. In the event Customer allows evocortex access to its personal data, Customer will ensure that the applicable statutory requirements regarding the transfer to and the processing by evocortex are complied with.
5. In the event Customer allows evocortex to use its name as a reference customer, evocortex has the right to include Customer's name in a list of reference customers for its own promotional purposes and to use Customer's corporate signs, trademarks and logos in printed publications and on the evocortex website for this purpose.

§ 6 Compensation and Terms of Payment

1. In the absence of other agreements, evocortex will be compensated for its Services on a time and materials basis subject to the agreed daily or hourly rates. The compensation will be invoiced to Customer at monthly intervals at the beginning of each month after the Service was provided together with the activity reports that are customarily used by evocortex. Unless provided otherwise by the parties, the daily rates cover a working time of eight (8) hours if the compensation is charged on a time and materials basis. Daily working time exceeding this maximum shall be compensated on a pro-rated hourly basis. A 50% supplement will be charged for Services rendered on weekends and public holidays (public holidays in the federal state of Bavaria and December 24 and 31) and at night (from 7 p.m. to 7 a.m.).
2. For an employee's trip from its business location to Customer's location the actually incurred expenses will be charged as travel expenses. evocortex has the right to determine the means of transportation (air travel: business class, railway: 1st class, car: EUR 0.50/km). Accommodation will be charged as against receipt, food will be charged based on lump-sums in accordance with the then-valid maximum rates permissible under tax law. Travel time is working time and will be charged to Customer at 50% of the applicable hourly rate.
3. All prices quoted are subject to the statutory value added tax (VAT) valid at this time. Payments shall be made by Customer within thirty (30) calendar days from the invoice date with no deductions.
4. In the event Customer is in default with a payment, evocortex has the right to suspend the provision of its Services with immediate effect upon the fruitless expiration of a two-week grace period until Customer has fully settled its payment obligations. Any other rights of evocortex based on Customer's default in payment remain unaffected. Customer shall not offset claims or withhold payments, unless its counter-claims are undisputed or have been finally adjudicated.

§ 7 Liability

1. evocortex shall pay damages for material or pecuniary damage or loss, or reimburse wasted expenditures, irrespective of their legal cause only to the following extent:
 - in case of intentional wrongdoing and gross negligence, or a guarantee issued for the full amount;
 - in all other cases only for a violation of a material contract duty, non-compliance with which would jeopardize the attainment of the contract purpose and on compliance with the same Customer may therefore rely (*Kardinalpflicht*). Liability is insofar limited to the typical and foreseeable damage, limited however, for each incident to the contract volume of the individual contract affected; if the contract volume of the individual contract is less than EUR 250,000.00, the liability amount shall be no less than EUR 250,000.00 (as a maximum upper limit).
2. For the restoration of data evocortex shall be liable pursuant to and within the limits of § 7, par 1, provided however, that Customer has ensured that data can be reproduced from machine-readable data stores at any time and at a reasonable cost.
3. The foregoing liability limitations also inure to the benefit of the legal representatives, vicarious agents and employees of evocortex.
4. Liability for damages based on death or bodily harm and liability under the Product Liability Act (ProdHaftG) remain unaffected by the above provisions.

§ 8 Rights to Use

1. evocortex reserves any copyrights, patent rights and other proprietary rights in and to the customer-specific work results (planning, design and concept documents, documentation, software, etc.), including all cases where they (e.g., customizing of software) resulted from Customer's specifications or cooperation.
2. Unless otherwise agreed, Customer will be granted the non-exclusive, irrevocable, indefinite and world-wide right to use the projectable supplies and/or services that evocortex provides to Customer for the agreed or intended internal business purposes of Customer. This right is subject to the condition precedent that the agreed compensation has been fully paid.

§ 9 Non-Solicitation

1. The parties agree not to solicit any employee of the other party (or any of its subcontractors) that has been assigned to the provision of Services and not to hire or employ such an employee in any other manner either themselves or by another company controlled by such party during the term of the individual contract and for a period of twelve (12) months following the termination or expiration of that individual contract. An employee is deemed to have been solicited if it cannot be verified that he/she was hired in connection with a public job advertisement.
2. In each instance of a culpable breach of § 9, par. 1, a contractual penalty in the amount of one (1) gross annual salary of the solicited employee will become payable. Any other claims of either party remain unaffected. Any contractual penalty paid will be offset against claims to damages, if any.

§ 10 Term and Termination

1. With regard to ongoing service agreements without a fixed end of the contract term, either party may terminate the contract by giving one (1) months' written notice to take effect at the end of a month, unless the individual contract provides otherwise.
2. Either party reserves the right to terminate the contract for cause.
3. The notice of termination must be in writing to be effective.

§ 11 Final Provisions

1. Customer is not allowed to assign or transfer any contractual rights or duties to third parties – including any affiliated companies of Customer – without the prior written consent from evocortex.
2. Modifications and amendments of the agreement must be in writing to be effective (fax shall suffice, email is not sufficient). Any waiver of this mandatory written form requirement must be in writing.
3. The laws of the Federal Republic of Germany shall apply, the conflict-of-laws rules of International Private Law and the UN CISG are excluded. Place of jurisdiction for any disputes arising out of or in connection with the agreement is the competent court at the registered office of evocortex. evocortex has the right to bring action against Customer before any other national or international court having jurisdiction.
4. If any provision of these GTC or the individual contract is or should become invalid or if there are any gaps, the remaining provisions shall remain in full force and effect. The invalid or missing provision shall be replaced by such a valid provision that most closely reflects the business intention of the parties at the time the contract was concluded.

B. Specific Terms and Conditions for Services rendered under a Contract for Work

The provision of Services under a contract for work (*Werkvertrag*) is subject to Part A of these GTC; in addition, the following Specific Terms and Conditions for Services rendered under a Contract for Work set forth in this Part B shall apply. In the event of a conflict, the terms and conditions contained in Part B shall take precedence over the terms and conditions in Part A of these GTC.

§ 12 Planning and Execution of Services

1. Generally, evocortex shall provide Services under a contract for work based on a specification provided by Customer and confirmed by evocortex in writing. In the absence of other agreements, the specification contains the conclusive description of the requirements and expectations of Customer. The specification confirmed by evocortex is attached to the individual contract and becomes an integral part of it.
2. Upon Customer's request, evocortex shall draft the specification on its own, for separate remuneration and with Customer's assistance, or assist Customer with the drafting of the specification. Customer shall check the specification that has been jointly drafted by the parties or solely by evocortex whether the scope of Services described therein fully and correctly reflects its requirements and expectations. In the event Customer finds errors, deficiencies, gaps or contradictions while checking the specification, it shall promptly notify evocortex hereof and evocortex shall amend and/or rectify the specification accordingly; otherwise Customer shall accept the specification in writing. The specification is deemed to have been accepted in the event Customer fails to object to it by written notice to evocortex within two (2) weeks from its receipt.
3. Upon confirmation of the specification drafted by Customer by evocortex or upon acceptance of the specification drafted by evocortex by Customer, respectively, the specification shall constitute the binding and final basis for the provision of any further Services and supersedes any other existing service description documents. In the event Customer requests changes with regard to the concept or contents of the Services following the confirmation and/or acceptance of the specification, this shall be deemed a change request subject to the procedure described in § 15.
4. The tentative project procedure and schedule, the individual project stages and the milestones and the compensation and due dates will be recorded in a project schedule. The delivery dates and periods are not binding, unless they are referred to as binding in the project schedule. Binding milestone dates shall be explicitly referred to as such. They will be postponed or extended by such period during which evocortex waits for pre-requisite contributions or the cooperation of Customer or is prevented from performance with no fault on its part – e.g., by labor unrest, natural disaster, force majeure and other contingencies – and by a reasonable period to resume the Services following the end of the impediment or impairment. When a milestone has been reached, Customer shall inspect and accept the project state upon a corresponding request submitted by evocortex.
5. The scope and quality of the Services are exclusively governed by the individual contract and by the documents that were confirmed by evocortex to be binding (in particular, the specification). Additional specifications made by Customer need to be confirmed by evocortex in writing and in advance.

§ 13 Development and Provision of Software

1. In the absence of other agreements, Customer will be provided with the developed or modified software exclusively in object code form together with user documentation in the English language. The preparation and provision of a development documentation and other documentations (e.g., on software architecture, interfaces etc.) are subject to a separate agreement and to an extra charge.
2. As between evocortex and Customer, evocortex reserves any copyrights, patent rights and other proprietary rights in and to software that was developed or customized on behalf of Customer, including all cases where these resulted from Customer's specifications or co-operation.
3. Unless otherwise provided in the individual contract and upon payment of the agreed compensation, Customer will be granted the non-exclusive rights to use the software as set forth in the license agreement allowing the use of the software for its internal purposes to the extent contractually agreed or intended and to reproduce and distribute the software within this scope.

§ 14 Project Organization

1. The parties shall designate a project manager (and his/her alternate) as a contact person who will be responsible for the contract performance. The parties shall replace their project managers and their alternates only for important reasons and shall promptly notify each other of such replacement.
2. The project managers and their respective alternates are authorized to make any decisions that are relevant to the project and to make statements, in particular, to notify the other party of defects and to declare acceptance. The responsibilities of Customer's project manager shall also include the collaboration with and coordination of any of Customer's internal departments involved in the provision of Services and of any external service providers commissioned by Customer, in particular, with regard to the timely and due compliance with Customer's cooperation duty.
3. The project managers designated by the parties, together with one representative of the management team of either party, will form the steering committee. Upon request of either party, the steering committee will meet and make material decisions on the project work.
4. The parties shall hold project meetings at regular intervals. In the event evocortex drafts minutes of the project meetings at project manager level and/or of the steering committee this document will be binding on either party when evocortex provides it to Customer and Customer fails to object within one (1) week of its receipt in writing giving reasons for its objection. evocortex shall include a notice to this effect.

§ 15 Change Requests

1. Either party may propose modifications and extensions to the agreed Services in writing ("change request") at any time. evocortex has the right to refuse the execution of a change request if the modifications and extensions are not feasible or if evocortex cannot reasonably be expected to perform due to its operational capacity or capacity planning. The provision of the Services described in the individual contract and/or in the specification shall always take precedence over the execution of a change request.
2. In the event of a change request, Customer shall initially commission evocortex with the analysis of the change, modification or extension

and their consequences for the Services and consideration due under the agreement. evocortex shall determine the impact on the agreed supplies and/or services and, if necessary, determine the necessary changes in the specification and the project schedule as well as of the consideration and shall record this information in a written supplementary offer.

3. evocortex has the right to claim a reasonable, additional compensation on a time and materials basis for the review of the change request received from Customer and for the preparation of a supplementary offer. evocortex shall inform Customer of the necessary review and the related cost. This provision shall apply accordingly, if evocortex proposes a change request and if the parties mutually agree on its validation by evocortex.
4. Modifications of the agreed scope of Services, the specification, project schedule and other contract amendments shall be agreed upon in writing in the form of an amendment to the individual contract. In the event the parties fail to agree on the supplementary quotation submitted by evocortex within two (2) weeks from the date of its receipt, evocortex shall continue to perform the contract without taking the change request into consideration.
5. Unless otherwise provided in a contract amendment, the agreed performance periods shall be extended by the period during which the project work had to be suspended due to the change request, plus a reasonable period to resume contract performance.

§ 16 Acceptance

1. Only Services provided under a contract for work and other work results require an acceptance procedure to be carried out by Customer. If the Services provided by evocortex form part of an overall project of Customer for the development of its own product(s) based on, with the integration or usage of Software and/or Services provided by evocortex, Customer remains fully responsible – in the absence of other agreements in the individual contract – for the successful integration and "industrialization" of the Services provided by evocortex to obtain a finished product (and for its quality and characteristics). Only the Services rendered under a contract for work and other work results provided by evocortex require an acceptance procedure to be carried out by Customer.
2. Upon full completion of the agreed Services by evocortex, it shall provide the work results to Customer for acceptance and shall notify Customer of their readiness for the acceptance procedure. Customer shall perform the acceptance procedure within two (2) weeks and declare acceptance, unless a defect occurred during the acceptance procedure that prevents acceptance. During the acceptance test, the parties shall jointly draft minutes recording the test cases, the functionality tests performed, and the defects and errors, if any, found.
3. Acceptance will only be prevented or an interruption of the acceptance test will only be justified, respectively, if there are defects in the work results that preclude or significantly restrict their use. If possible, defects that prevent acceptance shall be rectified by evocortex during the acceptance test, in all other cases during a reasonable period after the acceptance test. Following the rectification of any errors or defects preventing acceptance, evocortex shall send Customer another notice regarding the readiness for acceptance. Customer shall carry out another acceptance test within one (1) week. Any errors or defects that remain unresolved at the end of the acceptance test shall be rectified by way of subsequent performance.
4. Upon request from evocortex, those components of the Services that can be treated as independent components (in particular, milestones) shall be accepted by Customer in accordance with the above provisions, to the extent that the corresponding work results are

suitable for an acceptance test. By way of such partial acceptance, Customer declares its consent with the corresponding components of the Services. Thus, any partial acceptance serves as an acceptance within the meaning of section 640 of the German Civil Code (BGB). During subsequent partial acceptance tests, only such components of the Services that had not been tested and accepted by that date shall be inspected, as well as the interoperability of these components with the work results that had been accepted and tested at an earlier date. Those components of the Services for which partial acceptance had been declared shall remain unaffected by the results of subsequent acceptance tests and the final acceptance procedure.

5. Acceptance or partial acceptance is also deemed to have been declared when Customer expresses its approval of the Services or any part thereof in any other manner, e.g., by using the Service in production operations, by due payment of the consideration, or if Customer does not notify evocortex of any defects preventing acceptance within two (2) weeks after a notification regarding the readiness for acceptance from evocortex. evocortex shall advise Customer of this effect in its notice regarding the readiness for acceptance.
6. The parties may set forth deviating acceptance provisions in the individual contract. Customer is by no means authorized to productively use the work results provided until acceptance has been declared.

§ 17 Liability for Defects

1. Customer shall promptly notify evocortex in writing of any recognizable defects in a comprehensible manner together with any information that may be useful for the rectification of the defect.
2. evocortex warrants that any Services rendered under a contract for work and other work results (as defined in § 16, par. 1) provided to Customer meet the characteristics described in the specification (including any change requests, if any). In the event evocortex provides Services in accordance with Customer's requirements and specifications or customizes third-party components or components provided by Customer upon Customer's request or integrates these into its own software or products or combines them with the latter, evocortex does not assume any responsibility for the technical and legal properties of these third-party components and for the consequences of the realization of Customer's requirements.
3. Any impairment of a function resulting, for instance, from maloperation of the work results by Customer, from Customer's system environment or any other reasons for which Customer is responsible, shall not be deemed a defect. Furthermore, evocortex shall be released from its warranty obligations if Customer has modified the work results or used them in violation of the contract, unless Customer is able to show that the defect is not related to these circumstances.
4. In the event of a defect, evocortex shall discharge its warranty obligations by subsequent performance, in its own discretion, either by shipment of a work result that is free from defects or by rectifying the defect. The defect may initially be rectified by evocortex showing Customer a reasonable workaround that avoids or circumvents the effects of the defect.
5. In the event subsequent performance finally fails (no less than two (2) attempts for each notified defect), Customer may either rescind the contract or reduce the compensation. In view of the complexity of the Services, more than two (2) attempts of subsequent performance may be reasonable and Customer may be expected to accept them. In the event of only a slight deviation of the work results from the contractually agreed quality Customer has no right to rescind the agreement. evocortex shall be liable for damages or reimburse-

ment of wasted expenditures based on a defect in accordance with the limits set forth in § 7.

6. In the event evocortex performs Services in connection with the trouble shooting or rectification of defects without being obligated to do so, it may claim additional compensation from Customer on a time and materials basis. In particular, this shall apply if a defect reported by Customer cannot be reproduced or if it cannot be attributed to evocortex. There is no claim to additional compensation, if Customer was unable to recognize that the defect was not related to the evocortex Services.
7. Customer's claims based on defects will come under the statute of limitations within one (1) year from acceptance of the work results concerned. This shall not apply in the event of intentional wrongdoing or gross negligence on the part of evocortex, in the event a defect is maliciously concealed or in the events described in § 7, par. 4 of these GTC.