

# General Terms and Conditions of GFT Technologies SE for Purchase of IT Contractor Services

Dated: January 2019

1. **General; Scope of Application**
    - 1.1 These General Purchasing Terms and Conditions of GFT Technologies SE for Purchase of IT Contractor Services (the "T&Cs") shall apply to the business transactions of GFT Technologies SE and its affiliated companies (pursuant to section 15 of the German Stock Corporation Act, AktG) with registered offices in Germany (hereinafter "GFT") with other companies (hereinafter "Contractor") unless a separate framework or individual agreement has been concluded with them which expressly excludes the validity of the General Purchasing Terms and Conditions of GFT Technologies SE for Purchase of IT Contractor Services.
    - 1.2 These T&Cs shall apply to the provision of IT services for GFT or for GFT's clients (the "Client"). These services include in particular the creation of software as well as consulting and support in the field of data processing. The respective service to be rendered (the "Service") in the respective project (hereinafter referred to as "Project") shall be described in the respective corresponding purchase order (the "Purchase Order").
    - 1.3 **These T&Cs shall apply exclusively. They are part of the Purchase Order and any supplements thereto. Any terms and conditions of the Contractor which supplement or deviate from these T&Cs shall only become part of the contract if GFT expressly acknowledges this in writing. This shall also apply to terms and conditions which are stated in offers, order confirmations or other documents of the Contractor. Acceptance of services does not constitute acceptance of the Contractor's terms and conditions. These T&Cs shall also apply if the Services are accepted without reservation with knowledge of supplementary terms and conditions or terms and conditions deviating from these T&Cs.**
    - 1.4 The written form requirement in these T&Cs shall be satisfied by signed documents which are transmitted in paper form, as a fax or as a scan in an e-mail attachment. The text within an e-mail is not sufficient for the written form requirement.
  2. **Project Execution**
    - 2.1 The Contractor shall conduct, at his own responsibility, the Project appropriately and diligently, according to the principles of proper professionalism.
    - 2.2 The Contractor is entitled thereto and ensures to appoint, exclusively, own permanent employees for the fulfilment of his obligations arising from these T&Cs and the respective Purchase Order. The assignment of subcontractors is on the other hand only permitted after prior written consent of the GFT. The Contractor shall, for the execution of the Project, appoint only employees with adequate qualifications. The qualification of the employees is to be proven at the request of GFT. Employees of the Contractor are his vicarious agents. The Contractor undertakes to submit to GFT at the assignment of an employee who is not a citizen of an EU state, a copy of the work and residence permit of the employee, before his assignment within the scope of the Purchase Order is to take place. The Contractor shall ensure that the employee shall, in due time, before the expiry of the permit, apply for the renewal/extension thereof and undertake to submit a copy to GFT.
    - 2.3 The organisation of the Services to be provided is the responsibility of the Contractor, who also has the right to issue instructions to his own personnel.
    - 2.4 The operational organisation and other operational circumstances at GFT or its Client are to be made known, during the project execution to the Contractor, in a due manner and are to be adhered to. Where the Project requires that the work of the Contractor is to be carried out at GFT or the Client, time and place are to be agreed upon with the project leader of GFT or the Client. The Contractor generally provides its own equipment and infrastructure. For security or confidentiality reasons it might however be necessary to use special equipment or technical infrastructure of GFT or the Client. In that case, GFT or the Client shall in an appropriate manner make available such equipment or technical infrastructure.
    - 2.5 The Contractor shall provide written evidence (e.g. time sheet) of the Services actually rendered in the Project.
  3. **Documentation, Briefing**
    - 3.1 The Contractor shall document his project works in detail, thoroughly and clearly and hand over to GFT or its Client the documentation (user guide, programming manual, object and source code including all development documentation and commentaries).
    - 3.2 The documentation has to comply with the general directives and specific specifications of GFT and its Client. The general directives and specific specifications shall be disclosed to the Contractor in due time. GFT may request, that the Contractor prepares additional appropriate documentation for GFT or his Client.
    - 3.3 The Contractor shall, at the request of GFT or its Client, brief their personnel in the application of the software and documentation.
  4. **Compensation**
    - 4.1 Compensation shall take place only for performances actually rendered and against a performance record (e.g. a time-sheet). The amount of the compensation shall be determined in the Purchase Order.
  - 4.2 The Contractor generally provides its own equipment and infrastructure. Where it is necessary to use special equipment or technical infrastructure of GFT or the Client pursuant to clause 2.4, the costs for the portion of the resources and office space needed, which the Client of GFT has made available, are included in the stipulated compensation. Expenses, kilometre allowance, travel time and other additional services are compensated by the payment set forth in the Purchase Order. For travel on behalf of the Client, the costs shall be reimbursed on a time and material basis, provided that the Contractor has previously agreed this in writing with the Client's project manager. The maximum reimbursable amounts are those permitted under applicable tax regulations.
  - 4.3 The Contractor shall invoice his Services rendered monthly in arrears. The original performance record signed by the project leader concerned has to be attached to the respective invoice, by which the time spend on the individual works is proven. If travel expenses are invoiced, copies of the appropriate vouchers as well as the original completed form signed by the project leader regarding the travel expenses settlement and any other documents to be submitted are to be enclosed. A missing document, a faulty document, irreproducible information and/or missing necessary information shall impede the due date of the invoice.
  - 4.4 Invoice amounts due plus the effective value added tax at any one time and less specific transfer fees (e.g. for transfers overseas) are due for payment within
    - a) 30 days without discount; or
    - b) 20 days with 1% discount; or
    - c) 10 days with 2 % discount; or
    - d) 5 days with 3% discount
 after the receipt of the invoice and the corresponding correct documents. The Contractor shall in each of the invoices issued specify within which of the abovementioned periods payment shall be effected. Should the Contractor not mention the terms regarding the payment periods or stipulate, in the invoice, a payment period not mentioned above, the invoice shall be due, without discount, 30 days after receipt.
  - 4.5 The Contractor shall not be entitled to any remuneration for the times of absence by his employees due to illness, leave or other circumstances beyond the control of GFT or its Client. Compensation shall, also, not take place as long as the Contractor/his employees cannot render his/their performance due to a strike or a lock out at GFT or its Client due to force majeure or other circumstances beyond the control of GFT or its Client.
  - 4.6 The Contractor, as an independent contractor is also, in particular, directly responsible for all statutory tax and social security matters, which arise from the fulfilment of these T&Cs and the Purchase Order, e.g. also for tax payments, levies and social security contributions. The Contractor is liable, based on the contract, to pay taxes accordingly on accrued compensation and, if need be, accrued value added tax.
5. **Copyrights and Rights of Use**
  - 5.1 GFT/its Client should, in a comprehensive manner be enabled, in accordance to the contract, to utilise and market the compiled or processed software programs, parts thereof and all existing results, in conjunction with the Contractor's project works such as records and documentation (hereinafter collectively "Work Results") in an unamended or amended form, excluding the Contractor in all aspects – also commercially – be it in the own business of GFT/ the Client, be it by means of transfer against payment or free of charge to a third party. Included shall be the non-exclusive right, without additional compensation, to freely use all inventions made within the scope of the contract.
  - 5.2 Upon their creation, the Contractor irrevocably grants GFT/its Client the exclusive and transferable rights of use, unlimited in time, space and content, to the Work Results.
  - 5.3 The rights of use granted also contain in particular:
    - a) the right to use the Work Results in all ways, amongst others to run the programs in any manner in own and/or foreign companies, to duplicate, to distribute, to demonstrate, to make them known in public, to translate and to transmit them over transmission lines or wireless, as well as
    - b) the right to process the Work Results at own discretion without the permission of the Contractor, to modify or to transform in any other manner and to utilise the results obtained through this in the same manner as the original versions of the Work Results.
  - 5.4 At the request of GFT or its Client, the Contractor undertakes to refer to the aforementioned rights of use on the results of its activities by means of a corresponding note.
  - 5.5 The Contractor ensures that contingent rights pursuant to § 12 of the German Copyright Act (Urheberrechtsgesetz) – Consent of originator for the release of his works), § 13 clause 2 of the German Copyright Act (Naming of originator) and § 25 of the German Copyright Act (Access to works) shall not be asserted.
  - 5.6 Insofar as the Work Results can be separately protected by law (e.g. as a Patent, utility model or by copyright), GFT/its Client shall be entitled to such rights. Insofar as rights of the Contractor arise pursuant to § 8 UrhG (joint authorship), the Contractor shall waive its share of the exploitation rights in fa-

- vour of GFT/the Client. GFT/the Client shall be exclusively entitled to the proceeds from the use of the Services rendered by the Contractor within the scope of authorship. Insofar as the Contractor's cooperation is necessary to legally protect protectable services pursuant to sentence 1 of this Clause 5.6, the Contractor shall be obliged to support GFT/the Client to the extent necessary.
- 5.7 After the completion of the stipulated contractual performances, GFT/its Client may at all times require from the Contractor that he releases all originals and copies of the works and ensures the full compliance of this duty, in writing. If the copies are recorded on machine-readable data mediums of the Contractor, the deletion of the records shall take place at the time of the handover.
- 5.8 GFT/its Client shall be free, without the consent of the Contractor, to grant a third party basic or exclusive rights of use, in terms of individual or all rights granted to GFT/its Client or to transfer the rights obtained entirely or partially to a third party.
- 5.9 The payment of the compensation in accordance with clause 4 includes the granting of the preceding rights mentioned in this clause 5, insofar no further compensation is owed.
- 6. Free from Third Party Rights**
- 6.1 The Contractor further represents and warrants that the Work Results are free from intellectual property rights and other rights of third parties which restrict or exclude usage of the Work Results in accordance with Clause 5 of these T&Cs.  
In particular, the Contractor shall ensure through appropriate agreements with its employees that the use in accordance with Clause 5 is not impaired by any copyright or other rights. At GFT's request, the Contractor shall prove to GFT that corresponding agreements have been concluded with his employees.
- 6.2 The Contractor shall assume sole liability vis-à-vis those third parties who assert an infringement of intellectual property rights. The Contractor shall immediately indemnify GFT against all such claims and reimburse GFT for all disadvantages and damages in connection therewith without any limitation of liability.
- 6.3 If the contractual use is impaired by intellectual property rights of third parties, the Contractor shall have the right, to an extent reasonable for GFT/the Client, at the Contractor's discretion to either modify the Services in such a way that they fall outside the scope of protection, but nevertheless comply with the contractual provisions, or to obtain the authority to use them without restriction and without additional costs for GFT and its Client in accordance with the contract.
- 6.4 GFT and its Client shall each be entitled to join a possible legal dispute of the Contractor with a third party concerning the intellectual property rights asserted by the third party. Each party shall bear the costs incurred in carrying out the legal dispute on its own account.
- 7. Use of Resources provided**
- 7.1 The use of all the technical resources provided by GFT/its Client such as hardware, software programmes, performance capacity and other infrastructures as well as possible personnel assistance is solely allowed for purposes of GFT/its Client.
- 7.2 Reproduction or distribution of the software programs or data provided by GFT/the Client on the Contractor's computer is only permitted with the prior written consent of GFT/the Client. The same shall apply to the transfer of programs by the Contractor to a computer of GFT/the Client. GFT/the Client shall be entitled, by means of IT technical controls, to ensure that the technical and other resources made available to the Contractor by GFT/the Client are only used for the performance of the contractually owed services.
- 7.3 In the event of improper use by the Contractor of resources provided by GFT/the Client, the Contractor shall be liable for all damages incurred by GFT/the Client as a result of third parties claiming damages for the unauthorised use as well as for other costs incurred by GFT/the Client as a result of the improper use.
- 8. Confidentiality, Data Protection, Environmental Protection**
- 8.1 The Contractor undertakes to adhere to the statutory provisions regarding data protection, including but not limited to the GDPR, and to keep confidential all information acquired from the sphere of GFT and its Client, in particular business secrets, documentation and information regarding their respective clients as well as all acquired Work Results and findings associated to a Project and not to pass on to other third parties other than the Clients of GFT concerned, not to publicise or to use otherwise. This applies in particular to all information resulting from the use of technical and personnel resources not attributable to the Contractor and to security-relevant and personal data that the Contractor becomes aware of.
- 8.2 The documents and papers made available to the Contractor shall be stored in such a way that they are only accessible to the Contractor's employees named to GFT within the respective Project. The documents and records shall be returned to GFT/its Client after completion of the Project. The Contractor shall not be entitled to any rights of retention to the documents - irrespective of the legal basis.
- 8.3 The Contractor shall bind all persons, who are assigned by him to the completion/fulfilment of a Project, accordingly, also for the period after the completion of the Project/resignation from the services of the Contractor. This undertaking must be made in writing by the Contractor and be submitted at the request of GFT. The Contractor shall at the request of GFT disclose the relevant group of persons by name. The Contractor shall take all reasonable care to ensure that this group of persons treats the information obtained from GFT and its Clients strictly confidential and to prevent any misuse. GFT must be informed immediately if there are indications that third parties beyond the aforementioned group of persons may have obtained knowledge of data in accordance with clause 8.1.
- 8.4 The Contractor shall inform GFT immediately on suspicion of breach of confidentiality and/or data protection and at occasional reviews by the regulatory authorities, if these reviews relate to data of GFT and/or its Client.
- 8.5 The Contractor further undertakes to maintain the strictest secrecy with regard to the entire content of the Purchase Order. The Contractor's legal advisers are excluded from this.
- 8.6 The Contractor undertakes to pay a contractual penalty in the amount of EUR 25,000.00 (in words: twenty-five thousand Euros) for each case of infringement of the aforementioned obligations of this Clause 8 - also by an employee. The plea of continuation is excluded. Further claims for damages remain reserved.
- 8.7 In the context of the business contractual relationship between the Contractor and GFT, it may be necessary for the Contractor to provide personal data. That does include but is not limited to Curricula Vitae and contact data of the individuals that are supposed to participate in GFT projects to facilitate inter alia contract administration and management as well as project delivery and qualification for possible further projects.  
When necessary for those purposes, GFT might make such data available to its advisers, to third parties providing products or services to GFT (tax advisers, law firms, payroll providers etc.), to competent regulatory authorities, to any potential purchasers or clients of GFT or its business (on a confidential basis) and as required by law.  
Further, the Contractor hereby agrees that GFT may, for the same purposes, transfer such data to and from affiliated companies worldwide, also outside the EU.  
The Contractor shall ensure and warrants that the persons concerned agree to such use and disclosure in advance. The Contractor shall indemnify and hold GFT harmless against any claims and damages in this context.
- 8.8 All preceding regulations of this clause 8 shall also continue to exist after the termination of the contract.
- 8.9 Unless more specific regulations have been agreed, the GFT Information Security Management System Policy and the guidelines for information security and use of the IT infrastructure and all related regulations shall apply with regard to information security, in the currently valid version. The Contractor shall obligate its vicarious agents (employees and subcontractors) used for the provision of Services accordingly in writing. At GFT's request, which may be made at any time, the Contractor shall prove this by presenting the written obligations.
- 8.10 The Contractor undertakes, in fulfilment of the contract, only to supply such products and/or to use such technologies which, with regard to manufacture, application and disposal, comply with the provisions of the applicable environmental protection law. The Contractor shall indemnify GFT/its Client against all claims of third parties for breach of provisions relevant to environmental protection and undertakes to compensate GFT/its Client for all damages and any fines for which claims are asserted against GFT/its Client for breach of the aforementioned provisions.
- 9. Code of conduct for Contractors**
- The Contractor undertakes to comply with all laws, rules, and regulations of the applicable jurisdiction(s). The Contractor undertakes in particular not to participate, directly or indirectly, actively or passively, in any form of bribery, violation of the basic rights of its employees or in child labour. The Contractor shall comply and shall ensure his employees shall comply with GFT's Anti-Bribery&Corruption Policy and the Code of Ethics&Code of Conduct in their most recent version (available at: <https://www.gft.com/int/en/index/company/corporate-governance/compliance/>). Furthermore, the Contractor will take responsibility for the health and safety of its employees at their workplace, will comply with all environmental laws and use its best endeavours to encourage and demand from its own suppliers and contractors compliance with this Section 9. If the Contractor culpably violates these obligations in context with the delivery of services/goods to GFT, GFT shall be entitled to withdraw from or terminate the contract, notwithstanding the assertion of any additional claims and remedies that may be available to GFT. If such breach of duty is capable of remedy, GFT's right can only be exercised upon the unsuccessful expiration of a reasonable time limit for the remedy of such breach.
- 10. Loyal Conduct of the Parties**
- 10.1 The parties commit themselves to mutual loyalty. They are, in particular, bound not to attract or to appoint or otherwise to call upon for the rendering of performances, employees or vicarious agents of the other party, who have during the duration of the contract directly participated in a Project.
- 10.2 The Contractor is bound during the duration and within a year after the end of the duration of the Purchase Order not to request or accept assignments from Clients of the GFT and Clients of these Clients, for whom he indirectly worked or to render aforementioned performances. Excluded from this are those services which are in no way connected with the Contractor's previous activities with the Client concerned in terms of subject matter (e.g. follow-up or follow-up orders), location (e.g. in the same business) and personnel (e.g. the same awarding authority/organisational unit of the Client). The Contractor guarantees that his assistants, whom he appoints at the Clients of GFT or their clients, shall also adhere to the preceding obligations.

10.3 The Contractor shall pay GFT a contractual penalty of € 17,500.00 (in words: seventeen thousand five hundred Euros) for any breach of the above obligation. In the event of continued breach, each calendar month commenced shall be deemed a separate breach. The continuation of the offence ("Fortsetzungszusammenhang") is excluded. GFT shall not be barred from asserting higher damages. A contractual penalty shall, however, be set off against the damage.

#### **11. Duration and Termination**

11.1 GFT may terminate the Purchase Order for convenience with 14 days prior notice. Contractor may not terminate the Purchase Order for convenience before the project end date listed in the Purchase Order.

11.2 Performances rendered up to the effective date of termination shall not be returned and are to be paid by GFT. Claims for compensation, beyond this, do not exist.

11.3 If the documentation components for the performances rendered until the effective date of termination have not been submitted to GFT or its Client, the Contractor has to complete them immediately at the request of GFT or its Client and deliver them to GFT or its Client, insofar as the Contractor is liable for the compilation of the documentation components.

11.4 The right of both contractual parties to terminate due to a good cause remains unaffected.

11.5 Any and all terminations shall be in writing by a letter.

#### **12. Deterioration of Contractor's financial position; Contractor's insolvency**

12.1 If the Contractor's position should materially deteriorate, and should such deterioration jeopardizes the delivery and/or performance, in whole or in part, GFT shall be entitled to withdraw from the contract, in whole or in part, or to terminate the contract, in whole or in part.

12.2 If a preliminary liquidator is appointed or an insolvency proceeding is initiated as to the Contractor's assets, GFT shall be entitled to withdraw from the contract, in whole or in part, or to terminate the contract, in whole or in part.

#### **13. Supplementary application of statutory provisions**

To the extent these T&Cs do not contain any provisions, the statutory provisions shall apply.

#### **14. Applicable Law and Place of Jurisdiction**

14.1 These T&Cs as well as the Purchase Order shall be subject, exclusively, to German Law excluding the UN Sales Convention (CIS Convention on Contracts for the International Sale of Goods of April 11, 1980) and excluding the German Law of Conflict.

14.2 Place of jurisdiction for all disputes arising out of or related to these T&Cs shall be Stuttgart.

#### **15. Miscellaneous**

15.1 The Contractor warrants to have all official permits at his disposal and to have made all official notifications required for the fulfilment of the Purchase Order and to ensure their renewal/extension in due time.

15.2 The Contractor is entitled at all times to work for third parties. If the third party is a competitor of GFT, the Contractor is obliged, by means of appropriate actions, to ensure that his obligations in terms of the contract with GFT are fulfilled properly, in particular the duty of confidentiality in accordance with clause 8 of these T&Cs.

15.3 Should authorities or similar institutions, assert claims against GFT with the belief that the conclusion or the execution of the contract with GFT is in breach of public regulations (in particular legislation, statutory provisions, administrative directives etc.), the Contractor shall immediately take the necessary actions or propose an amendment of the contract to GFT to prevent an infringement of such provisions. This obligation is neither a „Festhaltungserklärung“ under German Law nor an obligation to make such a declaration.

15.4 The Contractor may transfer rights and duties arising from the contract to a third party only after prior written consent of GFT. Any rights and obligations under the contract may only be assigned by the Contractor to a third party with GFT's prior written consent. The assignment of work to subcontractors shall also not be permitted without the express written consent of GFT and shall entitle GFT to withdraw from the contract, in whole or in part, and to claim damages.

15.5 Claims against GFT may only be assigned with GFT's prior written consent.