

# General business terms and conditions for services provided by Danielle-Software GmbH (Danielle)

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These general business terms and conditions for services provided by Danielle Software & Service GmbH was last updated on 1 October 2018.

## § 1 Validity of the Terms and Conditions

1.1 The Danielle contractual terms and conditions shall apply exclusively for all deliveries and services provided by Danielle as well as for any business contacts preceding such a contract. Any other terms and conditions shall not become part of the contract, even if Danielle does not explicitly object to these.

1.2 Even if no other reference is made hereto when other contracts are concluded, the valid version of the Danielle general contractual terms and conditions for commercial transactions shall apply in each case, unless the contracting parties agree otherwise in writing.

1.3 Offers by Danielle shall be subject to confirmation and shall be unbinding unless an offer has been marked in writing as binding. Offers made by the customer shall be binding for three weeks. A contract shall become effective when Danielle confirms the order in writing or when Danielle carries out the order.

## § 2 Principles for the Provision of Services

2.1 In so far as services are provided at the customer's premises, Danielle alone shall be entitled to give its employees instructions. Those employees shall not be involved in the customer's business. The customer may only give instructions to the Danielle project leader, and not directly to individual employees.

2.2 Danielle reserves the option of replacing an employee at any time by another equally skilled employee. Danielle can also employ freelance personnel and personnel from other companies in order to fulfil the requirements of the agreement. Danielle shall inform the customer of any change in employees.

2.3 In the event that Danielle cannot perform services for reasons that lie with the customer, Danielle shall nevertheless be entitled to the remuneration. Danielle shall otherwise re-deploy any free working capacity depending on what is possible and on the condition that the customer informs Danielle in writing as soon as possible of the impediment to its work. A period of at least 20 working days must be observed for this purpose.

2.4. Danielle uses the chatbot 'Danielle Talk'. The chatbot can be used by customers without additional cost if they have already paid for using any other module. However, the scope, i.e. the number of queries, may be limited and is based on the number of queries and answers that have to be processed by Danielle Talk at the same time. If customers would like to use Danielle Talk without this possible restriction, Danielle would be please to make a non-binding offer in this respect.

## § 3 Selection and Specifications

3.1 The customer is aware of the essential functional characteristics of the services to be provided by Danielle. He shall check that the specification of the subject matter covered by the contract correspond to his wishes and requirements. In case of doubt, the customer must obtain expert advice before the contract is concluded. Danielle provides consulting services for a separate fee.

3.2 The customer shall set out, in writing, his requirements as regards the services provided by Danielle, for instance in the form of a description of requirements or a set of specifications. The implementation of the requirements must be agreed contractually in writing.

3.3 If the description of the requirements for the deliveries and services provided by Danielle cannot be carried out by the customer by himself, particularly when drawing up the specifications for the development or adaptation of the services, Danielle shall provide support for the customer in return for separate remuneration. The description of requirements (specifications) that was drawn up jointly must be approved by the customer in writing. It shall be deemed to have been approved by the customer no later than 14 days after it was prepared and submitted by Danielle if the customer does not plausibly complain of defects, gaps or contradictions in writing. The description of requirements shall constitute, after its approval by the customer, the basis that shall be binding for subsequent collaboration.

3.4 Presentations in test programs as well as product and project descriptions shall not be considered as guarantees. Guarantees require an explicit written confirmation by Danielle.

## § 4 Scope of Services

4.1 The scope and condition of deliveries and services shall essentially depend on the contract signed by both parties or on written confirmation of the order by Danielle or on the approved specifications, provided such specifications were commissioned by the customer. Other details shall be binding only if Danielle has confirmed them in writing as binding.

4.2 The customer may request changes and extensions in writing. Danielle may refuse in writing to implement the changes set out in the request if implementation is unreasonable with regard to its operating capacity, if the changes or extensions are incapable of being implemented or if the modification would result in a reduction in the agreed remuneration.

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4.3 If the actual execution of the changes has effects on the range of services provided under the contract (in particular remuneration, deadlines, subject of the services), the contracting parties shall adapt the contractual provisions in writing. For this purpose, Danielle shall provide the customer, within an appropriate time, with an offer covering the additional costs incurred by the change request and the necessary alterations in the time schedule. The remuneration shall be based on the Danielle price list in force at the time. Danielle shall be entitled to charge for the costs of the examination and any standstill costs brought about by the change request. In the event that the contracting parties fail to reach agreement on an amendment to the contract within three weeks of submission of the said offer, Danielle shall execute the contract without taking account of the change request. § Section 649 of the German Civil Code (BGB) remains unaffected.

4.4 Danielle shall provide the services using such technical means as Danielle deems necessary or appropriate and as are available to Danielle. In agreement with the customer, Danielle may assign sub-contractors to execute the work.

## § 5 Copyright and Granting of Rights

5.1 If the services provided by Danielle lead to programs, manuals, sketches or such like, they are protected by copyright. In the relationship between the contracting parties, Danielle shall be vested exclusively with all rights to the services and to the documents provided in the course of the preparation and execution of the contract or in the course of training. This shall also apply if the software was developed as a result of the requirements or collaboration of the customer. If the rights belong to third parties, Danielle shall have appropriate rights of exploitation.

5.2 The customer shall acquire such non-exclusive powers as he needs to use the results of the services constantly in his business for his own purposes in such manner as is described in the contract, in the subsequent provisions and in the manuals. Leasing, hiring out, dissemination and presentation of the services shall not be allowed without Danielle's prior written consent.

5.3 Any use of the services which goes beyond these provisions and the contract shall require Danielle's prior written consent. Danielle shall invoice the client for any further use in accordance with the current price list.

5.4 As far as other working results produced for the customer in the context of a contract (e.g. preliminary studies, design and planning documents, drawings, etc.) are concerned, the customer shall obtain straightforward, unrestricted rights of use. The customer shall be entitled to copy, translate and process the working results for his own purposes. If he wishes to distribute, present, make commercial use of, or publicly report the results of work or processing, he must obtain Danielle's prior written agreement.

5.5 In the event of an infringement of industrial property rights by third parties, the customer shall support Danielle to the best of its ability and within reason in the judicial and extrajudicial exercise of rights. The customer shall inform Danielle immediately in writing in the event that third parties seek access to the software made by Danielle; he must draw third parties' attention to the limited right of use.

## § 6 Customer Cooperation

6.1 If it is necessary for the fulfilment of the contract, the customer shall support Danielle without charge in the enforcement of the contract. He shall provide Danielle promptly with all information necessary for the enforcement of the contract. He shall keep up to date all documents put at his disposal by Danielle in the course of the provision of services provided and archive them.

6.2 The customer shall make available promptly, to the extent necessary and free of charge, for example, employees, work areas, documents and other information that may be needed for the fulfilment of the contract.

6.3 If the client fails to comply with his obligations to cooperate, Danielle shall not be in default if the cooperation was necessary for Danielle to provide the service. If the customer's cooperation is not correct or consistent or is corrected at a later date, resulting in more time and effort, Danielle can issue an invoice for this additional effort provided that the customer does not immediately carry out its cooperative tasks correctly at Danielle's request. Other claims by Danielle shall remain unaffected.

6.4 Upon conclusion of the contract, the contracting parties shall appoint a contact partner or a project leader (where appropriate also representatives thereof). The customer's contact partner (project leader) shall be Danielle's contact; he shall ensure good cooperation and shall take the decisions necessary for the order. The contracting parties shall inform each other in writing of a change in the identity of the contact partner.

6.5 The customer is aware that he must be fully committed to promoting Danielle's work.

## § 7 Time of Performance, Delays

7.1 Danielle shall perform work on working days from Monday to Friday between 8.00 a.m. and 5.00 p.m. on its premises or, by agreement, on the customer's premises. In the latter case, travelling time and travel expenses are to be paid separately by the customer.

7.2 Information on the time of performance and delivery shall not be binding unless Danielle has promised a delivery time in writing as being binding. The right remains in all events to self-delivery; Danielle is therefore only responsible, with regard to supplies and services provided by third parties, for ensuring that the order is properly carried out and that non-delivery is not due to reasons for which Danielle is responsible. Partial deliveries are permissible in so far as the parts delivered can be used reasonably on their own.

7.3 If the time of performance is to be adhered to, the customer must carry out his duty of cooperation on time and in full and comply with payment and other obligations. If these conditions are not met, the deadlines will be extended accordingly, at least by the period of time that the delay lasted as well as by an appropriate start-up time. This shall also apply where requirements are subsequently amended.

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7.4 Delivery and performance times shall be extended by those periods in which Danielle is prevented from providing services by circumstances beyond its control (e.g. labour disputes, force majeure, failure of technical equipment through no fault of Danielle, failure of suppliers to deliver), plus appropriate preparation time after the obstacle has occurred.

7.5 Danielle shall only be considered as being 'in default' if a reminder is issued. All notices and setting of deadlines by the customer must be in written form in order to be effective. Extension periods must be appropriate.

7.6 If the customer is responsible for disruptions to the project or delays, Danielle may charge additional costs.

## § 8 Payment, Prices, Bearing of Risk, Settlement and Relinquishment

8.1 Payments shall be due without deduction immediately after receipt of the invoice and payable within 14 days. Danielle may charge companies default interest at 8% above the respective key interest rate of the European Central Bank. Danielle may prove that damages are higher and may demand compensation for this.

8.2 In so far as no prices have been agreed for deliveries and services, the Danielle price list in force at the time of confirmation of the order shall apply. Services shall be invoiced in accordance with the time and effort involved. Accessories, data media, additional costs for work carried out at the customer's request outside normal working hours or at the customer's premises, travel costs and travelling time shall be paid for in accordance with the price list in force. Value added tax shall be added to all prices.

8.3 Deliveries and services shall be invoiced in conjunction with the date when they were carried out, or in each case, at the end of the month against proof of the expenditure and of additional costs. In the case of fixed-price contracts, Danielle shall be entitled to demand instalment payments.

8.4 Provided that no fixed price has been agreed in the order, all particulars given by Danielle with regard to the expected time and costs for an order are mere estimates based on the requirements specified by the customer and are non-binding in this case. If it should become obvious during the execution of the work that this estimate will be exceeded by more than 15% and that the increase is not due to an alteration in the requirements set out by the customer or caused by measures to be paid for specifically, Danielle shall notify the customer of the additional expense in writing. The customer shall be entitled, within a period of 10 days of receipt of the notification, to terminate the order. The work carried out up to then by Danielle shall be paid for in addition to expenses.

8.5 Danielle shall dispatch articles covered by the contract at the customer's expense. The place of performance shall be Danielle's principal place of business. The risk of accidental loss or destruction shall pass to the customer once the goods have been handed over properly packaged to the carrier.

8.6 The customer can only settle against legally established claims or claims recognised by Danielle unless the customer's counterclaim was caused by a culpable gross breach of duty by Danielle. This also applies to the customer's right of retention or right to refuse services. Otherwise the customer can only exercise his right to retain monies owing to defects, if he retains only that part of the remuneration sum that corresponds to the defect. The customer may only base the rights specified in this paragraph on claims resulting from the individual contracts concerned. The amounts that the customer shall pay are always determined according to section 366 paragraph 2, section 367 of the German Civil Code (BGB). The customer may assign claims under this contract to third parties only with Danielle's prior written agreement.

## § 9 Acceptance and Approval of Delivery and Services

9.1 Acceptance procedure shall be conducted only if the contracting parties have contractually agreed that such procedure is to be performed or a contract for work and services (Werkvertrag) has been concluded. Purchasing regulations shall come into force for contracts that cover the delivery of movable articles, that are to be developed or produced, with the result that there is no legal provision regarding inspections for these contracts. Nor are services generally subject to acceptance procedure.

9.2 In the event that, in accordance with paragraph 1, acceptance procedure is to be carried out, Danielle may request an acceptance certificate from the customer as soon as the delivery or work has been essentially provided correctly, completely and without defect. Particulars of the acceptance procedure may be laid down in the respective contract.

9.3 Even in the absence of a signed acceptance certificate, work shall be deemed as accepted two weeks after a written request for acceptance has been issued if the customer does not complain of defects in writing within the aforementioned time limit. The customer shall be entitled to refuse acceptance only if substantial defects are presented.

9.4 Paragraphs 1 to 3 shall also apply to partial services. However, in this case, approval shall not extend to such characteristics of the deliveries and services that can be checked only in conjunction with subsequent deliveries and services.

## § 10 Duty of Inspection, Notification and Rejection

According to section 377 of the German Commercial Code, the customer shall instruct a qualified member of his staff to inspect immediately all services provided by Danielle and to submit complaints describing exactly any defects in writing. The fault must be described in such a way that it is reproducible. The obligation is based on the customer's ability to detect faults and describe them.

## § 11 Material Defects and Defects of Title

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11.1 Danielle shall ensure that the services provided comply with the quality agreement set out in the relevant contract and are free of third-party rights which impede or preclude use by the customer in accordance with the rules set out in these conditions and in the relevant contract.

11.2 In the event of proven defects in the services provided by it, Danielle shall guarantee, in the first place, rectification free of charge in so far as this is technically possible and economically reasonable.

11.3 Should defects occur, Danielle shall subsequently fulfil its obligations by handing over a new version of the services or documentation, of its choosing, which does not contain the defect or by illustrating the possibilities for avoiding the effects of the defect. Defects of title may also be rectified in that Danielle wards off claims from third parties or satisfies these or, instead, exchanges the service concerned for another service of the same value which meets the requirements specified in the contract.

11.4 In the event that third parties assert property rights (in particular copyrights/patent rights) against the customer, the customer shall notify Danielle immediately in writing. The customer shall not recognise the claims of third parties on his own initiative. Danielle shall defend itself against the claims of third parties at its own expense and release the customer from all costs and damages connected with the defence against such claims, provided that such costs and damages are not due to the customer's acting in breach of his obligations.

11.5 In the event that defect rectification ultimately fails after several attempts - at least two attempts to eliminate the same defect - or Danielle refuses to carry out defect rectification, the customer shall be entitled to reduce the remuneration for the contract appropriately or to revoke the contract. Section 12 shall apply for compensation claims or reimbursement of futile expenses. If the customer wants to terminate the contractual agreement (e.g. cancellation, damages instead of services), the regulations in section 13 are to be adhered to.

11.6 The customer shall take, within reasonable limits, all necessary measures to determine, limit and document the defects. In the event of a warranty claim, the customer shall provide Danielle with all available information and shall co-operate to eliminate the defects according to section 6.

11.7 The precondition for warranty shall invariably be a complaint of a defect pursuant to section 10 and the fact that the defect is due to deliveries and services performed by Danielle. Delayed, insufficient or unfounded complaints shall release Danielle from its duty to perform. In so far as Danielle nevertheless acts, it shall invoice the work carried out.

11.8 The warranty period shall be one year. The statutory limitation period shall apply in the event of intention to deceive and the presence of a defect of title which could cause a third party, on account of a title, to demand the surrender of the software delivered or of other articles delivered. The commencement of the warranty period shall be governed by the statutory rules.

## § 12 Damages, Reimbursement of Futile Expenses

12.1 Danielle shall only be accountable for intent and negligence except where a warranty or a procurement risk has been accepted and provided that no agreement has been made to the contrary. Accepting a guarantee or a procurement risk must be explicitly agreed in writing between the contracting parties.

12.2 Danielle shall only be liable for compensation or reimbursement of futile expenses, whatever the legal basis, including non-contractual or pre-contractual liability, according to the following conditions:

In cases of intent, liability is to the full extent.

b) For gross negligence or in the absence of a guarantee issued or the acceptance of a procurement risk in accordance with paragraph 1, liability will be accepted to the amount of foreseeable damages or of the expense which should have been prevented by the duty to exercise care or by the warranty commitment.

c) In cases of ordinary negligence, and only if there is a breach of a cardinal duty or such an essential duty that achieving the purpose of the contract is endangered, Danielle is liable to pay compensation for damages or expenses which were typical and foreseeable, in accordance with the amount but limited to €10,000.00. For all cases of damages that occur within one year, total liability is limited to the annual amount of remuneration.

12.3 A claim for compensation for damages may not be lodged if Danielle is unable to fulfil its obligations because a sub-contractor does not deliver correctly. Danielle shall only be made liable if it does not carry out an order for a third party correctly or if it is responsible for non-delivery for other reasons.

12.4 Legal liability for injury to life, body or health and as specified under the product liability law shall remain unaffected.

12.5 The plea of contributory negligence shall remain unaffected.

12.6 If Danielle has an insurance policy to cover the damage, Danielle shall provide the customer with the full amount paid out under the insurance policy regardless of the limitation of liability and minus any amount already paid out by Danielle.

12.7 Danielle shall be liable for the recovery of data only where the customer has ensured that such data are reproducible at reasonable expense from data sets held in machine-readable form. This liability limitation does not apply to intent or gross negligence.

12.8 Claims for damages or reimbursement of futile expenses in the case of contractual or non-contractual liability shall be barred after one year provided that the damages are not based on injury to life, body, health or liberty and were not caused by intent. The time limit begins with the end of the year in which the damages occurred and the creditor acquired knowledge, or could have acquired knowledge without gross negligence, about the facts on which the claim is based and about the liable party. The time limitation comes into force at the end of the time limit stated in section 199 paragraph 3 BGB (German Civil Code). The limitation periods for defects of quality and title in accordance with paragraph 11 section 8 remain unaffected.

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## § 13 Termination of the Exchange of Services

13.1 Prior to any termination of the further exchange of services that is intended and results from a breach of an obligation by Danielle (by rescission, termination for good cause, claim for damages in lieu of performance), the customer must specify to Danielle the breach of the obligation and call on Danielle to rectify the defect within an appropriate space of time provided that a time limit is necessary in accordance with the legal provisions for each individual case. In addition, the customer must warn Danielle that, after the time limit has expired without a successful outcome, it shall accept no further services from Danielle and demand damages in lieu of services and/or rescission of the contract.

13.2 If Danielle reacts to the customer's request for rectification of a defect, the customer shall, in order to avoid legal uncertainty, declare definitively within one week of the expiry of the deadline whether he intends adhering to the existing contract. The customer shall not be entitled to terminate if Danielle has provided the services due.

13.3 The customer's claim to fulfilment of the contract shall remain in force until such time as he demands damages in lieu of performance and/or declares that he rescinds the contract.

13.4 All declarations in this context must be made in writing.

13.5 In the event that the customer exercises his right to terminate the contract and if he shares responsibility for the circumstances that entitle him to terminate the contract, any resulting claims for damages on the part of Danielle shall remain unaffected.

13.6 In the event of termination, the customer's right to terminate continuing contractual obligations (e.g. maintenance certificate) as well as the right in accordance with article 649 of the German Civil Code and the proper termination of a contract remains unaffected.

## § 14 Reservation of Title

14.1 Danielle shall retain the ownership of articles delivered until all existing and future claims under the contract concluded with the customer have been settled in full. The customer does not have the right to use the ordered articles until payment has been made in full. The customer must inform Danielle immediately in writing in the event of third parties having access to the goods subject to the retention of title and must notify third parties of Danielle's rights.

14.2 Danielle shall release the security, as it chooses, if the amount of the security arising from the retention of title exceeds the claims to be secured by 20%.

## § 15 Confidentiality and Safekeeping

15.1 The contracting parties shall be under a duty to keep confidential all such information and documents containing commercial or business secrets or designated as confidential as they acquire from the other contracting partner or as become known to them in the course of execution of the contract, even after the end of the contract. This shall apply in particular to the ordered articles delivered by Danielle and copies thereof made by the customer. The contracting parties shall keep these articles in a safe place and ensure that third parties do not have access to these.

15.2 Employees of the contracting parties and third parties taking part in the execution of the contract who have access in the course of their work to articles mentioned in paragraph 1 shall be informed about the duty of confidentiality and safekeeping. As far as the employees of the customer are concerned, this shall also apply to legal relationships relating to the ordered articles and to the powers of the customer under § 4.

## § 16 Data Protection

16.1 Danielle shall observe the provisions of the law on data protection. If Danielle, in the execution of the contract, processes personal data, Danielle shall act on the customer's instructions and in accordance with § 62 of the German Data Protection Law (BDSG). Danielle shall therefore process or use personal data only in the context of this contract or of other written instructions by the customer and in accordance with the provisions of Data Protection Law. Danielle shall impose the same obligations on any subcontractors under commission.

16.2 Danielle shall bind, in writing, members of its staff entrusted with processing personal data in accordance with section 53 of the German Data Protection Law (BDSG), to observe data secrecy and shall give evidence of this to the customer on request. Subcontractors shall also be bound accordingly.

## § 17 Training

17.1 Training announced by Danielle shall be carried out by Danielle when the minimum number of participants specified in the announcement is reached. If that number has not been reached one week before the training date, Danielle shall not be obliged to carry out the event, unless the remaining participants express the wish that the seminar be carried out nonetheless. In that case, the participation fee shall be increased pro rata for each participant in order to cover the difference between the actual remuneration received by Danielle and the remuneration if the minimum number of participants had taken part.

17.2 Danielle may, without giving reasons, replace the announced instructor by a person who has the same expertise.

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17.3 Danielle may at any time cancel an event and refund the seminar fees for important reasons, e.g. instructor is prevented from attending. In such cases, Danielle shall try to offer alternative dates. Danielle shall be obliged to inform the customer promptly in writing of the cancellation of a scheduled date.

17.4 The customer may, at any time, allow a person, other than the person originally registered, to take part.

17.5 The customer may cancel his registration without incurring further costs at any time up to four weeks before the training event. If a cancellation takes place after that time, the customer shall be obliged to pay a cancellation fee of 25 % of the amount of the seminar. Cancellation must in any event be made in writing.

17.6 Hotel reservations made by Danielle at the customer's request shall invariably be made by order of, in the name of and for the account of the customer. Danielle shall perform this service purely as a courtesy.

## § 18 Final Provisions, Written Form, Jurisdiction

18.1 All amendments and additions to the contract must be in written form in order to be effective. This also applies to the rescission of the requirement regarding the written form. The text form (e.g. e-mail) in accordance with section 126 b of the German Civil Code is not sufficient.

18.2 If contradictory interpretations or assessments arise between these terms and conditions for services and the general business terms and conditions <https://confluence.personalabteilung.cloud/pages/viewpage.action?pageId=9732225>, these terms and conditions for services shall take precedence.

18.3 The court of jurisdiction for any disputes in connection with this agreement is Frankfurt on Main if the customer is a businessman, a legal entity under public law or a special fund under public law, unless there is an exclusive place of jurisdiction. Danielle shall also be entitled to bring proceedings in the court that has jurisdiction for the customer's principal place of business in general.

18.4 The laws of the Federal Republic of Germany shall apply exclusively with the exception of UN commercial law.