

General Terms and Conditions for IT Services and Products of CRITEX GmbH

1. Scope of application of the general terms and conditions

1.1 These are the General Terms and Conditions of CRITEX GmbH (hereinafter referred to as "CRITEX") with regard to the IT services and products offered by CRITEX. The subject matter of these is the regulation of the legal relationship between CRITEX and the customer with regard to the ordered IT services and products.

1.2 The offer of CRITEX is exclusively addressed to customers who are entrepreneurs within the meaning of § 14 BGB (German Civil Code) or legal entities, tradesmen as well as self-employed persons or freelancers.

1.3 These General Terms and Conditions shall apply exclusively to the contractual relationship. Conflicting or more extensive terms and conditions of the customer shall not become part of the contract. They shall also have no effect if CRITEX has not objected to them in the individual case.

1.4 The General Terms and Conditions shall be supplemented by the respective valid product description. These documents are available at any time at www.critex.de and www.ivf.software and can be downloaded, saved and printed by the customer there.

1.5 Individual agreements between CRITEX and the customer shall take precedence over these General Terms and Conditions in the area of the respective individually agreed contractual condition (cf. § 305b BGB) and shall then be supplemented by these General Terms and Conditions. The offer and/or the order documents as well as the invoice of CRITEX shall be considered as individual agreements which shall take precedence over these General Terms and Conditions. Individual agreements require the text form to be effective.

2. Amendment of the general terms and conditions

2.1 CRITEX shall be entitled to amend the General Terms and Conditions after the conclusion of the contract, provided that essential provisions of the contractual relationship are not affected thereby and this is necessary to adapt to such developments which could not be foreseen at the time of the conclusion of the contract and the non-observance of which would not insignificantly affect the balance of the contractual relationship. Material provisions are in particular those relating to the type and scope of the contractually agreed services, term and termination. Furthermore, adjustments or additions may be made insofar as this is necessary to eliminate loopholes that have arisen after conclusion of the contract. This may be the case in particular if case law changes and one or more clauses of these General Terms and Conditions are affected.

2.2 Amendments to these General Terms and Conditions shall be notified to the Customer in text form in good time before their planned date of entry into force. The Customer shall have the right to object to the notified amendments. If the client does not object to the amendments in text form within a reasonable period of notice set by CRITEX in the individual case after receipt of the notification of amendment, the amendments shall become effective and part of the contract at the scheduled time.

The client shall be specifically informed of this consequence in the notification of change. If the Customer objects in due time, the previous terms and conditions shall remain valid. If the Principal objects to the amended General Terms and Conditions for CRITEX, CRITEX shall have a special right of termination with a notice period of one month. CRITEX shall exercise this right of termination in text form within 4 weeks after the client's objection.

3. Modification of IT services, products and price.

3.1 CRITEX shall be entitled to increase the agreed prices after the conclusion of the contract to the extent that price increases of third parties occur from which CRITEX obtains necessary inputs for the performance of the contract. The agreed prices shall also increase to the extent caused by an increase of the value added tax or mandatory statutory levies. Furthermore, CRITEX shall be entitled to implement price increases due to inflation, provided that CRITEX gives sufficient notice of such price increases prior to their coming into force.

3.2 Changes to CRITEX and/or the functionalities contained therein and its price shall be notified to the client in text form in due time before they become effective. The client shall have the right to object to the notified changes. If the client does not object to the changes within four weeks after receipt of the change notification in text form, the changes shall become effective and part of the contract at the scheduled time.

If the principal objects to the change of CRITEX or its functionalities or its price, CRITEX shall be entitled to terminate the contract with a notice period of three months. CRITEX shall exercise this right of termination within 4 weeks after the client's objection.

4. Conclusion of contract

4.1 All offers of CRITEX are subject to change without notice. An offer of CRITEX shall only be binding if expressly so designated in writing or text form. Unless otherwise stated, the offer with the calculated prices and services shall be binding for CRITEX for a period of four weeks.

4.2 Based on the non-binding offer of CRITEX, the customer shall place a binding order for the service offered by CRITEX.

4.3 Order confirmations shall in principle not be tendered. However, if the order is concluded by telephone, verbally or online, a confirmation letter in text form by CRITEX shall be required. All other verbal agreements shall also require a confirmation by CRITEX in text form.

4.4 The contract shall be concluded impliedly upon performance by CRITEX or upon receipt of an order confirmation in text form.

4.5 By placing an order, the principal assures to be an entrepreneur in the sense of § 14 BGB (German Civil Code), a legal entity, a trader or a self-employed person or freelancer.

4.6 CRITEX shall be entitled to reject orders or to withdraw from the contract at any time at its own discretion without the client incurring any claims for damages if it turns out that the content or form of the service owed violates changed legal provisions.

4.7 CRITEX shall also have the right to withdraw from the contract in case of reasonable doubts about the credit worthiness of the customer.

5. Subject matter of the contract

5.1 Part of the contract shall be the order documents, in particular the offer and, if applicable, a tendered order confirmation of CRITEX as well as these General Terms and Conditions. Individual agreements shall require the text form to be effective.

5.2 The subject matter of the contract shall be the IT services and products of CRITEX, each of which shall be specified in more detail in the order documents.

5.3 The Principal shall specify the terms of reference. On this basis, the performance of the task shall be jointly planned.

5.4 It shall be the sole responsibility of CRITEX to decide which employees shall be used for the specific performance of the task. In this context, CRITEX's own employees and freelancers as well as other companies may be used within the scope of the performance of the order. Irrespective of this, CRITEX reserves the right to exchange employees at any time.

5.5 The employees deployed for the performance of the task shall be subject exclusively to the instructions of CRITEX, irrespective of whether the service is rendered directly at the client's premises. The employees shall not be integrated into the operations of the Principal. The Principal may only submit proposals and tasks to the project manager or the account manager of CRITEX, but not directly to the individual employees.

5.6 The deadlines indicated in the implementation and project plans are usually estimated times, unless the agreements made between the parties indicate that deadlines have been fixed in a binding manner.

5.7 If CRITEX is dependent on the cooperation or information of the Principal and the performance is delayed for lack of / due to delayed cooperation or if the performance is impeded due to force majeure, e.g. war, riot, natural disasters or due to similar events such as strike, lockout, intervention by public authorities or other circumstances beyond CRITEX's control, agreed deadlines shall be extended by a reasonable period of time.

5.8 In such a case CRITEX shall inform the Principal about the circumstances of the impediment and, after their termination, shall immediately agree on a new date for the performance of the services.

5.9 During the term of the contract and the related use of CRITEX systems, the Principal may propose changes and adjustments at any time.

5.10 CRITEX shall respond in writing to the Client's requests for modifications and/or adaptations by means of a statement regarding a corresponding feasibility as well as the preparation of a corresponding offer.

5.11 Upon acceptance of the offer by the client, a contract with modified contents according to the offer shall be concluded between the client and CRITEX. The remuneration for this shall be based on the then current price list of CRITEX GmbH.

5.12 Until the conclusion of the amended contract, all other work shall continue to be performed according to the existing contracts. However, the Principal shall be entitled to demand the complete or partial interruption of any work. Any resulting delay in performance or deadlines shall, however, be borne by the Principal.

6. Acceptances

6.1 If an order of the Customer consists of several individual works that can be used independently of each other, the Customer shall accept each individual work separately and promptly.

6.2 If market products are used as a basis or tool for the realization of an order, functional restrictions and errors caused by these products shall not constitute grounds for refusal of acceptance.

6.3 Concepts and specifications of the Principal shall require written acceptance by CRITEX. Concepts and specifications of CRITEX shall be accepted by the principal prior to realization. A written order based on the contents of these elaborations shall constitute an acceptance free of defects and errors.

6.4 The Principal shall inspect the result within 10 working days and notify any defects or declare acceptance. The service shall be deemed to have been accepted if the Client neither notifies defects nor declares acceptance within this period. Insignificant defects shall not entitle the Customer to refuse acceptance.

6.5 Notices of defects to the detriment of market products shall be reported by CRITEX to the supplier for rectification to the extent that rectification is necessary for CRITEX's performance of the service.

7. (Cooperation-) Obligations of the Customer

7.1 The client is aware that the performance of the services included in CRITEX as well as their quality may decisively depend on his cooperation. For this reason, the client shall be obliged to support CRITEX in the performance of the agreed services to the best of its ability, to create the prerequisites within its operational and risk sphere which are necessary for the proper performance of the order and, in addition, to fulfill the obligations imposed on it pursuant to this clause 7 in a timely and complete manner.

7.2 These obligations shall include in particular, but not be limited to, the following obligations:

7.2.1 Contract data

The principal shall be obliged to provide all contract data requested upon conclusion of the contract completely and truthfully. In addition, the principal shall inform CRITEX without undue delay in text form of any changes in the contractual data and of any material circumstances required for the performance of the contract.

7.2.2 Legal issues

The principal shall clarify all legal issues, in particular professional, competition, trademark, copyright, personality, data protection and name law issues, on his own initiative before placing the order.

7.2.3 Securing of provided access data

The client shall be obliged to keep the access data strictly confidential and to protect them against unauthorized access to the required extent. He shall inform CRITEX without delay as soon as he becomes aware that such access data have become known to unauthorized third parties.

The Principal shall not make the Access Data and/or the Services based on the access available to third parties for the purpose of use without prior agreement with CRITEX.

7.2.4 Other duties to cooperate

For the use of the CRITEX Systems the Principal shall provide for the appropriate working environment (workstations, network, server) according to the specifications of CRITEX. The Principal shall cooperate free of charge in the performance of the order, in particular in implementations and the performance of works, e.g. by providing employees, work rooms, hardware and software, data and telecommunication facilities. He shall grant CRITEX direct access to hardware and software by means of remote data monitoring. He grants, for the purpose of license verification and evaluation of anonymous usage data, a connection to the CRITEX license servers at least on a monthly basis. He shall answer questions, check results and test systems provided by CRITEX without delay. Any errors or defects shall be reported to CRITEX immediately upon knowledge thereof.

The Principal shall name one or more contact persons as well as their communication data under which the contact person(s) can be reached.

The contact person(s) shall be in a position to make the necessary decisions for the client or to bring them about without delay.

The contact person(s) shall ensure a good cooperation with the contact persons named by CRITEX (usually project managers, account managers). The employees of the Principal shall be released from other activities to a reasonable extent for these activities.

The principal shall be obliged to use the services and systems provided by CRITEX in compliance with the respective applicable legal provisions, any official orders and the contractual agreements made with CRITEX.

7.2.5 Legal consequences of a breach of (cooperation) obligations

Reference is made to the indemnification obligation and/or the liability of the customer in case of a claim against CRITEX by third parties in case of a breach of the (cooperation) obligations according to clause 10 of these General Terms and Conditions for CRITEX.

Furthermore, CRITEX shall not be in default with the fulfilment of its obligations to perform to the extent that a delayed or omitted fulfilment of an information, cooperation or other obligation of the client is (co-)causal for this. In case of delays in the performance of individual contractual services due to the failure or delay of the customer to cooperate, CRITEX's claim for remuneration as well as its due date shall remain unaffected.

8. Granting of rights

8.1 The Principal shall irrevocably grant CRITEX, to the extent necessary for the performance of the contract, the non-exclusive but transferable right of use, unrestricted as to time, content and territory, with respect to the contents provided as well as the results created as a consequence of the performance of the service. The transfer of rights includes the complete granting of rights with regard to all already known as well as future types of use.

8.2 The Principal agrees that CRITEX may use the results or parts thereof resulting from the performance of the Services for reference purposes for its own advertising.

8.3 CRITEX shall be the exclusive owner and holder of the Service, the Software, all graphics, logos, trademarks and names used by CRITEX in connection with the Products.

8.4 Furthermore, CRITEX shall become the owner of all intangible property rights, in particular copyrights, to the results, e.g. concepts, planning documents, specifications, developments, documentations, studies, inventions, user or maintenance manuals as well as other documentations, upon the creation of the Service.

8.5 The client shall be free to make suggestions to CRITEX for the improvement of the service. By doing so, however, the Client acknowledges and recognizes that all rights to the improvements and/or modifications accompanying such suggestions shall be vested in CRITEX and CRITEX shall not be subject to any obligation to compensate the Client for such suggestions.

8.6 If the client acquires copyrights to the results by his cooperation, he shall transfer to CRITEX the exclusive right, unlimited in time, place and content, to process, exploit, market and otherwise use these results in any conceivable way.

8.7 If the Results are protectable, CRITEX shall be entitled to apply for the respective property rights in any countries at its own discretion and in its own name, to maintain them or to drop them at any time.

9. Rights of use of the customer

9.1 After full payment, the client shall be entitled to the simple right of use of the work results, limited in time and content to the duration of the contract period, for its own purposes within the projected scope, unless otherwise agreed.

9.2 By granting the license of use CRITEX grants the Principal a non-exclusive, non-transferable and revocable right, limited in time and content to the duration of the business relationship, to use the offered products under the conditions and for the purposes described in the offer or contract.

9.3 Any other and/or further use or exploitation shall be excluded. In this context, CRITEX assures that it is the right holder or licensee of all third party programs offered and that it has been granted the corresponding rights of use for all third party products required for the service vis-à-vis the Principal.

10. Liability of the customer and indemnification

The Principal shall indemnify CRITEX and CRITEX's vicarious agents against all claims of third parties asserted against CRITEX or CRITEX's vicarious agents on the basis of a breach of one of the aforementioned obligations set forth in Clause 8 and Clause 9. This shall also include compensation for any damages resulting therefrom, including the costs for an adequate legal defense.

11. Warranty and Liability of CRITEX

11.1 CRITEX warrants that the Software which is the subject matter of the contract shall have the functions specified in the specification of services during the term of the contract. CRITEX warrants that it will perform the assumed work with utmost care and to the best of its ability. In this context, the Principal shall immediately notify CRITEX of any program errors, need for modifications and other circumstances indicating the necessity of maintenance measures.

11.2 Errors notified by the Principal shall be corrected within a reasonable period of time. If the elimination of the error proves to be impossible, CRITEX shall offer an alternative solution.

11.3 In particular, CRITEX does not warrant the uninterrupted availability of the service as well as the quality of the services.

11.4 CRITEX has no influence on the transport of data via the Internet. Therefore, CRITEX does not guarantee that messages sent will reach the recipient correctly.

11.5 A certain performance result or even a certain success shall generally not be owed. If the provision of a certain service result has been expressly agreed upon and CRITEX cannot provide the owed service result at the agreed time for whatever reason, CRITEX shall be entitled to make up for the owed service result.

11.6 If the principal refuses to inspect the notified defects, the assertion of further warranty claims by the principal shall be excluded. If notified defects can no longer be verified after joint verification, the notification of defects and thus also the defect shall be deemed to have been eliminated.

11.7 The warranty shall be excluded for defects / damages which occur after handover to the Principal as a result of faulty or negligent handling on the part of the Principal or its vicarious agents/representatives, its/their disregard of instructions of CRITEX or due to special external influences beyond CRITEX's sphere of responsibility.

11.8 If the Principal or third parties make any non-agreed modifications to programs or systems, the warranty for these and the resulting consequences shall also be excluded. Properties shall not be warranted by CRITEX.

11.9 In case of wholly or partly defective performance for which CRITEX or its partner is responsible, the principal shall have a claim against CRITEX for rectification of defects. If the rectification of defects has failed, the principal shall have the right either to a reasonable reduction of the remuneration (abatement) or to withdraw from the contract. The rectification shall be deemed to have failed after the second unsuccessful attempt. Any further claims of the client shall be excluded.

11.10 CRITEX shall be liable in accordance with the statutory provisions for damages to life, body and health caused by a culpable breach of duty by CRITEX, CRITEX's legal representatives, employees or vicarious agents as well as damages covered by the liability under the Product Liability Act.

11.11 Unforeseeable events, such as force majeure, strikes, official measures, failures of means of transmission or other disruptions for which CRITEX is not responsible, shall release CRITEX from its obligation to perform and warranty. In such a case, CRITEX's liability shall also be excluded in its entirety.

11.12 CRITEX shall not be liable for any materials, contents and services of the client (e.g. employees provided, work rooms, hardware and software, data and telecommunication facilities) which the client makes available to us for the performance of the contract or which the client publishes or distributes through the components of CRITEX.

11.13 For any other damage not covered by the foregoing clauses, the liability of CRITEX, irrespective of the legal ground, shall be excluded to the extent permitted by law, unless CRITEX is guilty of intent or gross negligence. In addition, liability in case of slight negligence shall not be excluded, if CRITEX is charged with the breach of such an obligation, the fulfilment of which enables the proper performance of the contract in the first place (so-called cardinal obligation). In the latter case, liability shall be limited to the foreseeable damage typical for the contract, but not more than the sum of the annual order value.

11.14 All claims of the customer against CRITEX shall become statute-barred within one year from the statutory commencement of the limitation period. This shall not apply to the limitation of claims based on an intentional or grossly negligent breach of duty.

11.15 To the extent that CRITEX's liability is limited or excluded, this shall also apply to its service providers, legal representatives, employees or other vicarious agents.

12. Payment - Offsetting – Retention

12.1 The remuneration shall generally be based on CRITEX's price list as amended from time to time, unless otherwise stipulated by contract. The price list is subject to change.

12.2 Except in the case of a VAT exemption, all prices shall be exclusive of the respective statutory VAT. CRITEX shall be entitled to invoice partial services if this is reasonable for the customer. Payments shall be made with the payment term stated on the invoice / partial invoice. No discount shall be granted. From 30 days after the due date CRITEX shall be entitled to charge interest at the statutory default interest rate applicable from time to time.

12.3 Services shall generally be invoiced by CRITEX after their performance. As a rule, the services shall be invoiced once a month. Exceptions shall require a separate agreement. CRITEX may demand payments on account if the term of works and services exceeds 1 month. The amount of the instalment shall depend on the degree of completion.

12.4 In case of invoicing on a time and material basis, such invoicing shall be made upon presentation of the proofs of activities customary at CRITEX. Travel time, travel expenses and subsistence costs shall be charged depending on the place of business of the CRITEX employee.

12.5 Increases in costs for licenses and maintenance services provided and charged by third parties in the course of the performance of the Services between CRITEX and the Principal shall be passed on by CRITEX to the Principal without any changes.

12.6 CRITEX reserves the right to charge reminder costs for reminders issued (in non-commercial business transactions only from the 2nd reminder on). At the latest 30 days after the due date CRITEX shall be entitled to charge interest at the statutory default interest rate applicable from time to time.

12.7 In principle, order intermediaries, third party service providers and other third parties shall not be entitled to accept payments on behalf of CRITEX. In case of collection or cash payment by CRITEX, advance payment or cash payment shall be made immediately upon placing the order. Payments made to CRITEX's agent shall be accepted upon proper receipt.

12.8 CRITEX shall be entitled, also during the term of the contract, to make the further performance of services dependent on the settlement of outstanding invoice amounts in case of objectively justified doubts about the solvency of the client.

12.9 The Client shall only be entitled to set-off and/or retention if the counterclaims have been legally established or are undisputed.

13. Confidentiality and data protection

13.1 The contracting parties shall treat as confidential the trade and business secrets of the other contracting party of which they have become aware in the course of the business relationship, even after termination of the business relationship.

13.2 The Customer may only make Contractual Objects accessible to employees and third parties to the extent that this is necessary for exercising the right of use granted to it; otherwise, it shall keep all Contractual Objects secret. He shall instruct all persons to whom he grants access to the Subject Matter about CRITEX's rights to the Subject Matter and the obligation to maintain secrecy.

13.3 Personal data shall only be processed in compliance with the applicable data protection law, in particular the DSGVO and the BDSG. The Parties agree to conclude a contract for commissioned processing according to Art. 28 DSGVO or a contract for joint responsibility according to Art. 26 DSGVO in case of necessity.

14. Miscellaneous

14.1 Place of performance and place of jurisdiction for both parties shall be the registered office of CRITEX, unless otherwise provided by mandatory law.

14.2 The law of the Federal Republic of Germany shall apply to all legal relationships arising from the use of the Services, excluding the provisions on international private law and the UN Convention on Contracts for the International Sale of Goods.

15. Address and registered office

CRITEX GmbH
Stobäusplatz 4
93047 Regensburg

Phone: +49 941 59 93 9330

GmbH with registered office in Regensburg
Commercial register: HRB 7829

VAT ID No.: DE 210 357 794

Managing directors: Michael Schindler, Andy Murr

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