



TERMS AND CONDITIONS

NewCon GmbH

GENERAL

The Terms and Conditions as amended regulate the privity of contract between the NewCon GmbH and its customers (called client below). Regulations within written contracts with clients have priority over the Terms and Conditions.

1. ORDER ACCEPTANCE

All contracts and agreements are only binding to NewCon in case that they are signed by appropriate officials / with the company's official mark of the client and NewCon and only obligate NewCon in the extent defined in the acceptance of order.

NewCon is not bound to reply or accept the offer of the client. Changes to the offer of the client in the acceptance of order are considered as approved and the contract agreed according to the acceptance of order, if the client doesn't contradict to the changed acceptance of order within 7 days.

Belated changes of the contract by the client or additional orders have to be agreed on separately and are billed separately.

The client's Terms and Conditions are hereby excluded from the specific legal transaction and the business connection as a whole.

NewCon's offers are subject to changes if nothing different is stated explicitly in the offer.

2. SERVICES OF NEWCON

2.1 Range of services

Subject of an order may be:

1. Strategic Consulting in the IT Sector
2. Management Consulting
3. Merger & Acquisitions
4. Vendor and Product Selection
5. Mediation
6. Interconnect Billing
7. Revenue Assurance
8. Performance Measurement
9. Business-Intelligence
10. Data warehouse
11. Provisioning
12. Billing
13. Customer Care
14. Other IT-Services

2.2 Accomplishment of orders

The accomplishment of orders is carried out depending on the way and extents of information, documentation and resources provided by the client at full before the start of the project. Information, which is revealed later on by the client, documentation, which is handed over later on, and change requests, can increase the price.

2.3 Delivery date

NewCon is always anxious to hold the agreed dates for completion. For being able to hold the dates, the client is bound to allocate all documentation and operations necessary for the project till a date declared by NewCon and to comply with his obligation to co-operate in the required degree.

Delays in delivery and cost increases, which result from incorrect, incomplete or belated changed information or documentation, are not covered by NewCon and cannot lead to a delay by NewCon. Resulting losses and additional costs are to be held by the client or NewCon has to be compensated to the full extent including economic losses like missed gains.

2.4 Right of withdrawal, force majeure

In case the agreed dates cannot be held because of reasons for which the client is accountable for, especially strikes within the concern of the client, NewCon has the right to withdraw from the contract without granting an additional respite and by keeping all legal claims.

In case it turns out during the project that the carrying out of the project is not possible because of legal or factual reasons, NewCon is going to inform the client in written form. In case the content of the project is not modified by the client based on this written message so that the service is possible, NewCon can resign from the contract without setting a time limit and with keeping all judicial claims.

Force majeure, strikes, natural disasters and all other circumstances which are located outside of NewCon's influence capability discharge NewCon from the contractual obligation and / or allow NewCon to reassess the agreed dates.

2.5 Place of delivery of the services of NewCon

If no other place of delivery is appointed the place of delivery is 1220 Wien, Donau-City-Straße 1.

3. RESERVATION OF PROPERTY RIGHTS

Delivered services and goods stay property of NewCon till the complete payment by the client has been accomplished. The client does not have the right to dispose of the services and goods before the complete payment has been accomplished.

The client is bound to immediately inform NewCon about garnishments that effect property of NewCon.

4. PRICES, COMPENSATION OF EFFORTS

All prices are quoted as Euro and exclude sales taxes. They apply only to the particular contract. NewCon is authorized to demand advanced payment to the amount of 50 % of the total contract amount. Not sooner than with the arrival of the advanced payment on NewCon's bank account the agreed start of commission is held as occurred.

The costs of program and data carriers like hard disks, floppy disks, USB – sticks, exchangeable discs and so on as well as governmental fees are charged to the client.

The costs of tolls, daily allowance and overnight stays are charged to the client separately. These cost separation is based on the real effort and according to the valid Austrian fiscal clauses concerning the daily rates for kilometer allowances. Home to office time is rated as work time.

5. TERMS OF PAYMENT

The bills rendered by NewCon are due not later than 14 days after the delivery of the account, tax – free and free of costs.

During projects that consist of multiple phases NewCon is authorized to render a partial bill after delivering each phase. Concerning partial bills the same terms of payment are in effect as for the contract as a whole.

The abidance of the agreed date of payment is a basic foundation of the accomplishment of NewCon's services.

The violation of the agreed dates of payment authorizes NewCon to immediately stop the current operations and to resign from the contract with the client. All costs resulting from this resignation as well as occurring disadvantages like the loss of earnings have to be compensated by the client.

The client is not authorized to restrain payments because of incomplete services, warranty claims or other complaints.

Place of delivery for the payment is 1220 Wien, Donau-City-Straße 1.

6. INTERESTS FOR DELAYS, REMINDER FEES

In case of a delay of payments of the client interests of 6% in excess to EURIBOR as well as reminder fees amounting to 25 EUR each become due. Higher claims remain.

7. WARRANTY CLAIM

Claims by the client have to occur as an enrolled letter within 3 weeks after the agreed supply of service or parts of the service have taken effect. The claim for improvement always has the priority over price reductions or conversions. On justified claims the deficiencies will be corrected within an adequate period. In such a case the client has to supply NewCon with every piece of information and action needed to analyze and correct the claim.

The assumption of defectiveness according to § 924 ABGB is excluded.

NewCon does not bear any warranty concerning errors, breakdowns or damage that result from improper service, components of operation systems that have been used without permission of NewCon, as well as faulty hardware, not suited data volumes or transport damages.

8. ACCOUNTABILITY OF NewCon

Claims to damages of the client against NewCon are excluded as far as they have not been the result of verifiable intentional or grossly negligent behavior. The burden of prove lies at the client. Also the compensation of consequential damage, economic loss and loss of interest caused by losses because of a claim by a 3rd party is excluded, even if the claim would be acceptable by law. The accountability of NewCon is further limited to the particular net total without sales tax of the contract for every single case of accountability as long as the claims are acceptable by law.

Claims to damages of the client against NewCon can only be judicially enforced within 6 months after notice of the damage and injuring party has been taken by the client and not later than 3 years after the causal event itself.

9. RECRUITMENT BAN/EMPLOYMENT BAN

The client is bound not to recruit or employ, even by a third party, during the period of the contract and up to 12 months after its finish any personnel of NewCon, freelancers of NewCon or other contractors that have directly or indirectly been part of a contract, e.g. by an company in which the client or one of his shareholders have been participating directly or indirectly. In case of contravention the client is bound to pay a negligence liability in the amount of the actual annual gross salary of the employee.

Exceeding claims for damages stay unaffected.

10. INTELLECTUAL PROPERTY

The internet address and the homepage of NewCon, the trademark NewCon and all related graphics and logos of the products and services offered by NewCon are protected by copyright law and / or brands and / or domains. Client and 3rd parties may not use, copy, replicate, alter, amend or use in any other way the internet address, trademarks, logos or graphics without prior written agreement of NewCon.

All intellectual property rights, especially copyright, concerning contract – relevant services belong to NewCon or their licensor. The client only acquires the authorization which NewCon assigns to them separately in written form. In doubt the contractor only acquires an allowance for use.

11. CANCELLATION

The cancellation of a contract demands a prior written agreement of NewCon. Additionally to the generated services of NewCon in case of an agreement to the cancellation NewCon is authorized to charge a cancellation fee of 30% of the remaining contract value to the client.

12. DATA PRIVACY

The client has to commit his employees to compliance with the regulations of the Data Protection Act, especially §15 of the Data Protection Act.

13. SEVERABILITY CLAUSE

If one or multiple clauses of this Terms and Conditions are illegal, impracticable or not enforceable the validity of all other clauses of this Terms and Conditions remain. The place of the insufficient clause is taken by a valid, practicable and enforceable clause that is, from an economic point of view, as close to the insufficient clause as possible.

14. CHOICE OF LAW/PLACE OF DELIVERY/JURISDICTION

The privity of NewCon and its clients is subject to Austrian law excluding rules of conflict of laws of the international private law and the UN Uniform Law on the International Sale of Goods, even if the contract takes place abroad, may it be complete or partial.

The place of payment and delivery of all services based on the contract of NewCon and the client is Vienna. Exclusive jurisdiction concerning all disagreements because of contracts arranged between NewCon and the client is the court responsible for the first district of Vienna.

Concerning disagreements with consumers in terms of the consumer protection laws this clauses only apply as far as legally acceptable.