
DATEV eG Special Terms and Conditions of Purchase for Services

A. General Terms and Conditions

1. Scope of Validity

The provisions set out in the following sections of these Special Terms and Conditions of Purchase of DATEV eG (hereinafter referred to as "DATEV"),

B. Special Terms and Conditions for Services (including Consultancy Services),

C. Special Terms and Conditions for Work Performance,

D. Additional Terms and Conditions for Agile Methodology,

E. Additional Terms and Conditions for IT-related Services, and

F. Additional Terms and Conditions for Software Maintenance,

are valid only if the provisions are applicable to the service in question.

2. Rights of Use

- (1) The Contractor shall grant DATEV the non-exclusive, transferable, sublicensable, and irrevocable right, which is not limited in terms of time, territory or content, to use and exploit all work results that the Contractor achieved as part of its activity for DATEV upon their creation. Work results are new products and outcomes arising in connection with the performance of the contractually agreed services. If work results include software, the right of use and exploit refers to the object code and source code of every stage of development of the software, and includes all associated documentation.

The right of use and exploit includes in particular the right to modify, adapt, publish in part or in full, present, make works available to public, duplicate, distribute, exploit, and further exploit work results, and to perform such actions through and/or for a third party.

- (2) DATEV is entitled to have the work results as intellectual proprietary rights registered globally as such. Regardless of registration, intellectual proprietary rights are copyrights, patents, utility models, brands, designs, rights to databases, and all comparable rights. The Contractor shall help DATEV file these rights and provide all of the documents and permits required for this.
- (3) If the work result was created specifically for DATEV, DATEV shall have exclusive rights to it.

B. Special Terms and Conditions for Services (including Consultancy Services)

In addition and paramount to DATEV's General Terms and Conditions of Purchase, the following terms and conditions apply to the purchase of services, including consultancy services.

3. Service Performance

- (1) The Contractor shall engage only adequately qualified personnel to fulfill its contractual obligations. Upon DATEV's request, the Contractor shall give DATEV a description of the education and experience profiles of the employees used, which indicates their qualification to perform the service in question. The Contractor shall ensure that the services are performed with the professional care, on the basis of the currently accepted state of the art and current knowledge and in accordance with applicable law and regulations and contractual stipulations or guidelines.
- (2) If an employee engaged by the Contractor is changed, knowledge transfer and necessary training for the new employee shall be carried out at the Contractor's own expense.
- (3) The Contractor commits to handing over to DATEV the work results of its services/consultancy on an ongoing basis, but no later than the contractual end of the agreed service period.

4. Insufficient Performance

- (1) If a service is not performed in accordance with the contract, DATEV is entitled to require that the Contractor performs the service properly pursuant to the contract within a reasonable amount of time without additional costs.
- (2) If the Contractor's service/consultancy does not meet the level of quality described in No. 4, Para. 1, DATEV is entitled to reduce the remuneration. Further rights of DATEV remain unaffected.

5. Remuneration

- (1) The contractually agreed price is specified either as a fixed price or as a maximum price in the case of remuneration on a time and material basis.
- (2) A daily rate covers eight hours. Service days that cover a lesser or greater number of hours shall be charged on a pro rata basis per hour.

6. Termination

- (1) DATEV is entitled to terminate service/consultancy contracts in part or in whole at any time with a notice period of two weeks.
- (2) In the event of termination, remuneration will be calculated based on the ratio of the result achieved up to the point of termination to the final result, which efforts were aiming to achieve, but shall be no more than the value of the services actually performed up until the time of termination which are verified by the Contractor and usable by DATEV.

C. Special Terms and Conditions for Work Performance Services

In addition and paramount to DATEV's General Terms and Conditions of Purchase, the following terms and conditions apply to the purchase of work performance services.

7. Acceptance

- (1) DATEV shall declare its acceptance of the work performance service at least in electronic form, provided the service passes a function test conducted by DATEV. During this function test, DATEV checks whether the work performance service meets the contractual agreement and works with any agreed partial services without errors.
- (2) If different completion deadlines are agreed for self-contained partial services, DATEV is entitled to conduct a function test in relation to the individual partial service. Nevertheless, partial acceptance will not be issued.
- (3) DATEV will categorize any defects identified during the function test into the following described defect classes A, B, and/or C, and will record these defects along with their categorization in a test report:
 - a) Defect class A:

The service has a defect that makes it impossible to use the work performance service or only allows it to be used with severe limitations, or it has a defect that constitutes a security defect.
 - b) Defect class B:

The service has a defect that limits the usability of the work performance service without being a defect as defined for class A.
 - c) Defect class C:

The service has a defect that limits the usability of the work performance service but only in a non-essential way.
- (4) DATEV can refuse acceptance if either there is a class A defect or there are multiple class B and/or C defects, which make the contractually agreed use of the work performance service impossible or allow it only with severe limitations.
- (5) If defects are identified during the function test, the Contractor shall be given a reasonable amount of time to fix the defect; the function test is then repeated. Other rights of DATEV remain unaffected.
- (6) Implied acceptance, especially through the use of the service, is excluded.

8. Liability for and Investigation of Defects

- (1) The statutory limitation period for claims as far as liability for defects is concerned is capped by the number of days which DATEV was not able to use the contractual services due to a defect.
- (2) The Contractor must remedy the defect without delay through subsequent performance (redelivery, remedying defects, or new performance). If a defect cannot be remedied in the short term, the Contractor must – where feasible and reasonable in terms of the implications of the defect – provide a temporary assistive solution (a workaround).

- (3) If the defect is not fixed remedied within a reasonable period of time for subsequent performance set for the Contractor by DATEV, DATEV has the right to reduce the remuneration or withdraw from the contract and demand compensation in line with statutory provisions.

9. Remuneration

The contractually agreed price for the work performance service is specified as a fixed price.

10. Termination

DATEV is entitled to terminate the contract in part or in whole at any time with no notice period, whereby the consequence of termination follow the procedure set out in § 648 of the German Civil Code (BGB).

D. Additional Terms and Conditions for Agile Methodology

If agile methodology is used in the form of an incremental and/or iterative approach – especially in software development – the following terms and conditions apply in addition and paramount to DATEV's General Terms and Conditions of Purchase and the respective Special Terms and Conditions.

11. Obligations of the Contractor

- (1) The Contractor commits to filling the roles of its team within the contractually defined process model, especially the role of the central contact person, with qualified personnel in accordance with the respective technical and methodological requirements. The Contractor's central contact person takes over the coordination and the communication with DATEV and monitors and coordinates the development services of his team.
- (2) The Contractor shall deliver the scope of service agreed upon in the purchase order in iterations. Each iteration result shall be documented by the Contractor on an ongoing basis in accordance with the contractually agreed process model and handed over to DATEV pursuant to Section E, No. 14.
- (3) The Contractor shall ensure that the cooperation and corresponding communication with DATEV employees is limited to a sensible level as necessary for technical and practical purposes. Thereby, the exchange of information etc. should enable the respective counterpart to perform the service and/or individual tasks independently. Instructions to the Contractor's employees shall only be issued by the Contractor. DATEV employees shall not issue instructions for tasks to the Contractor's employees. Tasks that become part of the service performance shall be derived together or independently by the Contractor and subsequently selected and processed independently by the Contractor.
- (4) Problems and hindrances must be reported without delay by the Contractor through its central contact person to the central contact person appointed by DATEV, so that DATEV can assess them.

12. DATEV's Cooperation

- (1) DATEV shall appoint a central contact person at the start for the organization and coordination of DATEV's agreed cooperation.
- (2) The employees appointed by DATEV shall take part in meetings in accordance with the process model used and provide organizational cooperation in these meetings.
- (3) DATEV commits to providing the Contractor with access to infrastructure and providing all necessary information, insofar as this is required to perform the respective service.
- (4) DATEV shall test the respective work results for each iteration and, if the work result meets the agreed requirements, shall issue approval of the respective work result, reserving acceptance until the conclusion of the order.

13. Remuneration

- (1) The prices agreed in the contract per milestone are maximum prices. Remuneration is paid on a time and material basis.
- (2) A daily rate covers eight hours. Service days that cover a lesser or greater number of hours shall be charged on a pro rata basis per hour.

E. Additional Terms and Conditions for IT-related Services

If services are IT-related (e.g., software development), the following terms and conditions apply in addition and paramount to DATEV's General Terms and Conditions of Purchase and the respective applicable Special Terms and Conditions.

14. Handover of Work Results and Documentation Obligation

Each work result created by the Contractor shall be handed over to DATEV completely, including full use of the required documentation by DATEV. The work result documentation, where software development is concerned, includes in particular the current development stage in the form of the source code and object code, including program description, installation instructions, and developer documentation, as well as a description of the development environment and runtime environment.

15. Use of Open Source Software

The Contractor is only permitted to use open source software to develop the contractually commissioned software if there are no copyleft effect. No later than at the time of handover of the work result, the Contractor shall also give DATEV the source code (if requested in accordance with licensing law), the documentation, and the licensing conditions for the open source software used.

16. Security Analysis

- (1) The Contractor shall grant DATEV the right to conduct a security analysis (e.g., penetration analysis for IT services) – including analysis performed by a third party commissioned by DATEV – in addition to function tests.
- (2) If DATEV exercises its right and conducts a security analysis, the Contractor shall provide the required assistance for this and fix any identified security vulnerabilities without delay at its own expense.
- (3) In the case of software development, the Contractor shall have a security analysis carried out by an independent third party in accordance with the requirements of the IT security guidelines (see Section 17.1) and shall submit the audit report to DATEV.

17. IT Security Requirements

- (1) The Contractor shall observe the IT security directives described in detail in the relevant DATEV Security Guideline, which can be found at <https://go.datev.de/procurement-download> and shall give DATEV a report on its compliance with the DATEV Security Guideline. The Contractor further commits to always developing its solutions in accordance with the current state of the art. This applies especially to security functions, confidentiality, integrity, authenticity, and traceability. It also includes, for example, the implementation of solutions to prevent attacks on online applications, such as "cross site scripting" or "SQL injection."
- (2) The IT security directives are confidential and subject to an obligation to maintain confidentiality. The Contractor is only permitted to disclose the IT security directives to those employees who absolutely need to know. DATEV's permission is required in order to share the IT security directives with subcontractors. Upon conclusion of the agreed services, the Contractor shall destroy the IT security directives without delay.
- (3) The Contractor shall pass on all information about any security defects/vulnerabilities that arise in connection with the contractual software to SOC@DATEV.de as soon as it becomes aware of them.
- (4) Software developed by the Contractor must only allow authorized personnel access to confidential data, especially the delivered program code. Information being obtained by unauthorized third parties and manipulation of data must be excluded.
- (5) If DATEV deems a penetration test necessary in the performance of function tests and/or security analyses, in order to identify any existing security vulnerabilities, the Contractor commits to signing the "Permission to Attack" sample declaration, which can be found at <https://go.datev.de/permissiontoattack>, within two weeks of request by DATEV and give this to DATEV. DATEV has a right to specify the performance at equitable discretion in accordance with § 315 BGB in order to adapt the declaration.

18. Remote Access

If and as long as a separate agreement on remote access to DATEV's systems exists between the parties, the contractual services of the Contractor can be performed with remote access to DATEV's systems from the premises of the Contractor.

F. Additional Terms and Conditions for Software Maintenance

In addition and paramount to DATEV's General Terms and Conditions of Purchase, the Special Terms and Conditions for services and for work performance services, and the Additional Terms and Conditions for IT-related Services, the following terms and conditions apply to software maintenance.

19. Scope of Maintenance Services

- (1) The Contractor shall perform the contractually agreed maintenance services for the contractual software. These services include providing support, fixing errors, and adapting and further developing the software.
- (2) If the Contractor or a third party modifies the software, the maintenance services shall be performed on the modified version. Changes to equipment and systems on which DATEV uses the software also do not affect the aforementioned obligations.

20. Adaptation and Further Development

The Contractor commits to always delivering to DATEV the most up-to-date version of the software, plus version-specific notes on new functionalities with corresponding documentation, while maintaining the software's operability to run and observing the IT security directives. In particular, the Contractor must implement adaptations due to legal changes without delay and provide them to DATEV immediately.

21. Support

The Contractor shall provide support to DATEV employees by telephone, e-mail, and/or a support portal for the software to be maintained. The Contractor shall log DATEV's support queries and provide DATEV with the content of the log.

22. Abatement of a nuisance

- (1) The Contractor commits to fixing errors in the software. An error exists if the software, due to a fault with it, does not perform its function, delivers incorrect results, aborts its process unexpectedly, or otherwise does not behave in accordance with its proper function.
- (2) The Contractor shall inform DATEV without delay of errors in the software as soon as it becomes aware of them.
- (3) Depending on the error classification by DATEV, the following response times of the Contractor apply:

a) Priority level A:

Priority level A exists if there is an error that makes it impossible to use the software or only allows it to be used with severe restrictions, or the error constitutes a security defect.

In this case, the Contractor shall start solving the problem without delay and inform DATEV within two hours of the status of the problem solution.

If the malfunction is due to errors in the software which the Contractor created and delivered, the Contractor shall provide a fix or workaround without delay and, if necessary, an updated version of the user documentation for the software licensed by the Contractor.

In the case of errors with this priority level, the Contractor shall, if necessary, work on site at DATEV's premises to analyze or resolve the problem within 24 hours at its own expense.

b) Priority level B:

Priority level B exists if there is an error which limits the usability of the software, but the error is not a priority level A error.

The Contractor shall start solving the problem on the day on which the error is reported and inform DATEV of the status of the problem solution within eight hours during its support hours, until the problem is fixed.

If the malfunction is due to errors in the software which the Contractor created and delivered, the Contractor shall provide a fix or workaround without delay and, if necessary, an updated version of the user documentation for the software licensed by the Contractor.

In the case of errors with this priority level, the Contractor shall, if necessary, work on site at DATEV's premises to analyze or resolve the problem within three working days at its own expense.

c) Priority level C:

Priority level C exists if there is an error which only limits the usability of the software to an insignificant extent.

The Contractor shall submit confirmation of receipt within 24 hours of receiving the error report. The Contractor shall start fixing the error within five working days and inform DATEV of the status of the error fixing efforts on a monthly basis.

If the errors can be attributed to faults in the software which the Contractor created and delivered, the errors will be fixed in the next update.

- (4) If identified errors cannot be fixed in the short term, the Contractor shall provide DATEV with an assistive solution (a workaround) if this is reasonable for DATEV in terms of the implications and use, and if this is feasible for the Contractor. Nevertheless, a workaround does not constitute an error fix. The

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Contractor is obligated to fix the error in the next update at the latest.

- (5) When an error has been successfully fixed, the Contractor shall submit a declaration of restored function to DATEV. DATEV's acceptance of the error fix will be considered granted if DATEV does not notify the Contractor of the continued errors within 15 working days of receipt of the declaration of restored function.

23. Remuneration

- (1) The contractually agreed price for the maintenance services is specified as a fixed price.
- (2) Remuneration will become due for payment by DATEV in advance for the respective maintenance period upon receipt of a proper invoice from the Contractor.

24. Termination

- (1) DATEV is entitled to terminate the maintenance services contract in part or in whole at the end of each calendar year with a notice period of three months.