

## 1 General information

- 1.1 Bacher Systems EDV GmbH (hereinafter "Bacher Systems") offers its customers a comprehensive range of services and products in the IT sector. Services and consideration are defined in customer-specific offers or individual contracts between the customer and Bacher Systems. In particular, the type of deliveries and services to be provided by Bacher Systems and their scope, duration and remuneration are agreed therein.
- 1.2 Unless otherwise agreed in individual cases, Bacher Systems fulfils its customers' orders based on the terms and conditions in this document (hereinafter "GTC").
- 1.3 For certain services, additional service-specific conditions apply.
- 1.4 Any declarations to the contrary by the customer shall only be valid if they are accepted in writing. Orders shall only be considered accepted after all details have been clarified by written confirmation.
- 1.5 If there is no separate agreement between the customer and Bacher Systems on data protection, confidentiality and secrecy, the agreements according to the Bacher Systems document "Data protection and confidentiality" shall apply.
- 1.6 To facilitate readability, gender-specific differentiation is omitted without any intention of discrimination.

## 2 Definition of terms

Offer	The declaration made by Bacher Systems to the customer to conclude a contract for the provision of services under certain conditions
Order	The concrete declaration made by the customer to Bacher Systems that includes the intention to conclude a contract
Contractor	Bacher Systems
Bacher Systems	Bacher Systems EDV GmbH; 1100 Vienna, Wienerbergstrasse 11/B9
Cloud services	Collective term for infrastructures and/or software solutions that are provided as a service (e.g. "SaaS") on third-party systems
Service provision	Services provided by people with the required skills and billed according to time spent or as a flat rate without acceptance
Individual contract	Contracts that come about through a concrete offer and order based on these terms and conditions
Manufacturer	The entity who creates hardware, software or cloud services and has the (usually exclusive) right to use
IT components	Collective term for the hardware and software components covered by the individual contract
Customer	Client, contracting party in the individual contracts
Supply transaction	Order for the mere supply of IT components or third-party services, without any accompanying service provision by Bacher Systems
Project service	Services for creating an IT solution in the context of an order
Written	Email with personal email response from the recipient confirming receipt
Contracting party	Customer and Bacher Systems

### **3 Provision of the service by Bacher Systems**

- 3.1 The services provided by Bacher Systems within the scope of these GTC include, depending on the agreement:
- Supply of IT components
  - Access to cloud services
  - Project or work services
  - Service provision
- 3.2 Bacher Systems shall only provide installation, training, project, or work services if this is expressly agreed in the individual contract.
- 3.3 Bacher Systems shall supply documentation to the extent expressly agreed.
- 3.4 Bacher Systems shall provide the services in a professional and careful manner, using the current state of the art at the time the contract is concluded and taking into account the requirements agreed in the individual contract.
- 3.5 Both the time and location of the services are specified in the individual contract.

### **4 Customer cooperation**

- 4.1 To enable proper fulfilment of the contract by Bacher Systems, careful cooperation is required from the customer. In this context, the customer is obliged to cooperate as follows. If the customer does not provide the necessary cooperation, does not do so in a timely manner or does not do so in the manner customary in the industry or agreed, the resulting consequences (e.g. delays, additional expenses) shall be borne by the customer.
- 4.2 Ensure that it provides the required cooperation or that of its vicarious agents in good time, to the required extent and free of charge for Bacher Systems;
- 4.3 Provide Bacher Systems employees with all necessary, industry-standard, or expressly agreed support when executing the order. This includes, among other things, the customer ensuring the following on its side:
- a) a qualified person is available to assist at the place of fulfilment
  - b) free access to the respective infrastructure
  - c) access to the information required for the activity
  - d) required permissions
- 4.4 Written notification to Bacher Systems of significant changes in the environmental conditions and other circumstances essential for the provision of the service;
- 4.5 If the customer has specific expectations regarding certain functions or compatibility with other IT components or services, it shall agree this with Bacher Systems in advance in writing;
- 4.6 If only the delivery of IT components or access to cloud services is agreed, the sole responsibility for their selection, configuration and use lies with the customer;
- 4.7 Required security measures to protect its stored data from possible destruction.

## **5 Deadlines and time limits**

- 5.1 Service deadlines or time limits specified in contracts may change during the course of the project due to unforeseen circumstances. Dates are only binding if they have been expressly designated as "binding" in writing and by mutual consent.
- 5.2 If a delay is demonstrably due to obstacles for which Bacher Systems is not responsible, the time limit shall be extended appropriately.

## **6 Acceptance of work services**

- 6.1 The scope of functions to be provided by the work service and, if applicable, the criteria for acceptance are agreed in individual contracts.
- 6.2 In the event that only the delivery of IT products and the provision of cloud services and services have been agreed in the individual contract, the service shall be considered rendered as soon as the customer confirms delivery of the products and completion of the service provision.

## **7 Payment for services**

- 7.1 The remuneration to be paid by the customer for the contractually agreed services results from the respective individual contract.
- 7.2 If remuneration based on time spent has been agreed, the billing shall be based on Bacher Systems' activity reports. Billing shall be based on the times recorded by Bacher Systems employees with an accuracy of 0.25 hours. In this case, travel times shall be remunerated with flat-rate travel allowances or at the agreed hourly rate, depending on the agreement.
- 7.3 If, due to inaccurate information or a lack of cooperation from the customer, the workload exceeds the estimates that Bacher Systems used to calculate its offer, Bacher Systems shall be entitled to an appropriate increase in the original remuneration, even when the remuneration is based on a fixed price or has an upper price limit.
- 7.4 Unless otherwise agreed, Bacher Systems shall bill after the respective delivery or service provision, i.e. bills can be issued separately for different subsections (partial deliveries).
- 7.5 The agreed prices cover the services to the agreed extent and are exclusive of VAT. VAT is to be added. Default interest of 4% above the monthly Euribor shall be charged for late payments.
- 7.6 The customer can only offset undisputed or legally established claims against claims by Bacher Systems.
- 7.7 The remuneration for Bacher Services is regulated in the "Supplementary Contractual Terms and Conditions for Bacher Services".

## **8 Transport and transfer of benefits and risks**

- 8.1 Bacher Systems has taken out insurance for transport to the place of delivery.
- 8.2 Irrespective of who bears the transport costs, the benefits and risks are transferred to the customer when the latter accepts a delivery.
- 8.3 The customer accepts any shipping method chosen by Bacher Systems.

## **9 Rights of use**

- 9.1 Bacher Systems guarantees that the IT components and cloud services can be used as ordered without restrictions. In addition, the manufacturer's licensing terms take precedence.
- 9.2 Insofar as the provision of software or cloud services by Bacher Systems has been agreed, the customer shall be granted the non-exclusive and non-transferable right to exercise any rights of use after full payment of the agreed fee in compliance with the contractual specifications at the agreed place of installation for the contractual purpose to the extent of the number of licences purchased. In particular, the customer is not entitled to transfer rights of use to third parties or to make the use accessible to third parties.
- 9.3 Insofar as licensing rights to products (IT components, cloud services) from manufacturers are to be procured and made available to the customer within the scope of the provision of services by Bacher Systems, these shall be supplied on the basis of and under the terms and conditions of the licence or transfer agreement stipulated by these manufacturers. At the customer's request, Bacher Systems shall provide these terms and conditions.
- 9.4 The customer fully accepts – even if it waives inspection – the respective licence or transfer conditions of the manufacturer and shall indemnify and hold Bacher Systems harmless in the event of any breach of contract for which the customer is responsible, regardless of fault.
- 9.5 If the provision of software by the customer has been agreed, it is solely the customer's responsibility to procure and test it in good time, at its own expense, for the operation of its data processing.
- 9.6 In this case, the customer must also ensure a corresponding licence (right of use), in terms of both type and number. If third-party claims are made against Bacher Systems resulting from an alleged licence infringement of the software provided by the customer, the customer shall defend against these claims at its own expense and indemnify and hold Bacher Systems harmless in this regard.

## **10 Delivery and service defects**

- 10.1 Bacher Systems provides a warranty based on the statutory provisions, unless otherwise agreed below.
- 10.2 The warranty period for all defects is 12 (twelve) months from the handover of the IT components to the customer, in the case of project and work services with acceptance as defined in point 6.
- 10.3 Bacher Systems only warrants the correct function of IT components and cloud services supplied if this concerns usually expected features or the interaction in configurations previously agreed in writing.
- 10.4 Bacher Systems can remedy a defect at its discretion by subsequent delivery, improvement, or replacement. Replaced parts become the property of Bacher Systems.
- 10.5 Software defects shall be remedied online, regardless of the place of fulfilment agreed in the individual contract and insofar as technically possible.
- 10.6 During the warranty period, the customer shall receive free access to corrections (e.g. patches) or a new software version in which the defect has been corrected. The customer is responsible for applying corrections or installing new versions. There is no entitlement to newer versions of the software that contain functional improvements to the licensed software.

- 10.7 If the customer reports that the services are defective, Bacher Systems may, at its discretion, remedy the defects by subsequent delivery, improvement, or replacement. Replaced parts become the property of Bacher Systems. The customer shall exchange and return defective parts that the manufacturer has designed to be exchanged by the customer.
- 10.8 Bacher Systems accepts no liability for damage caused by the customer or third parties making changes to the services or replacing parts that do not meet the original specifications. The same shall apply correspondingly to damage caused by improper use or handling.
- 10.9 The customer may demand the cancellation of the individual contract due to a delay in delivery or service for which Bacher Systems is responsible only for parts of the delivery or services that have not yet been rendered or delivered. If partial deliveries/services already provided cannot be used by the customer, it is entitled to terminate the contract after a grace period has expired in vain.
- 10.10 Cases of force majeure do not entitle the customer to terminate the contract. In this case, the contracting parties shall jointly agree on a balanced solution for further action.

## **11 Information security**

- 11.1 Bacher Systems is certified according to the ISO 27001:2013 standard and thus meets strict requirements for information security, which are regularly checked by external auditors. In addition, Bacher Systems shall provide the customer with all information required to prove compliance with the regulated obligations. Bacher Systems shall facilitate and support reviews, including audits, carried out by the customer or an auditor commissioned by the customer at its own expense. Efforts incurred for this shall be charged separately.

## **12 Data protection, confidentiality, and secrecy**

- 12.1 If there is no separate agreement between the customer and Bacher Systems on data protection, confidentiality and secrecy, the agreements according to the Bacher Systems document "Data protection and confidentiality" shall apply.

## **13 Infringement of third-party property rights**

- 13.1 If third-party property rights are infringed when the service results are used as ordered and corresponding claims are asserted against the customer by property right holders, the customer shall inform Bacher Systems of this in writing immediately after receiving the notification of claim from the third party. In addition, the customer shall authorise Bacher Systems to defend against or settle such a claim at its own expense.
- 13.2 Insofar as the customer is obliged to pay damages and court and legal fees to the third party based on a final judgment or a settlement reached with the cooperation of Bacher Systems, Bacher Systems shall indemnify the customer against such claims and pay these amounts itself to the third party or, in the case of payment by the customer, reimburse the customer for these amounts.
- 13.3 In the event of an infringement of third-party property rights, Bacher Systems shall, at its own discretion and at its own expense, change or replace the service results or the associated documentation to the exclusion of further claims, in such a way that third-party property rights are no longer infringed and yet the agreed service characteristics are still essentially adhered to, or provide the customer with a further right of use by concluding a licence agreement with the property right holder. If none of these options is economically justifiable, Bacher Systems is entitled – to the exclusion of any other liability – to terminate the right of use for the service result in question and to refund the customer the fee paid for this.

## **14 Liability**

- 14.1 The contracting parties are liable without limitation for damage caused by intent or gross negligence. Furthermore, each contracting party is liable without limitation for damage resulting from injury to life, limb, and health. Bacher Systems is liable for product liability claims in accordance with the provisions of the Product Liability Act.
- 14.2 In cases of damage caused by a contracting party through slight negligence, the liability of the respective contracting party is limited as follows:
- a) in the case of agreed one-off remuneration, the liability per contract year is limited to the net order volume.
  - b) if recurring remuneration is agreed, the liability per contract year is limited to the net annual fee.
- 14.3 In this context, a damage event also refers to multiple instances of damage caused by the same cause or multiple instances of damage due to causes that are directly related in time and space, although the impact must be the same.
- 14.4 Liability for all other damage is excluded. Neither party is liable for indirect damage, incidental damage, associated or consequential damage, loss of profit, loss of sales or interest, or damage resulting from the loss of data or use of data.
- 14.5 The liability for misconduct of the manufacturers involved by Bacher Systems is limited to the careful selection of these manufacturers.
- 14.6 Claims for damages shall become statute-barred in accordance with the statutory provisions, but no later than one (1) year after the damage and the party causing it could have been identified.

## **15 Re-export**

- 15.1 Bacher Systems points out that the products and services supplied may be subject to export control regulations. In the case of export, the customer is responsible for observing the relevant laws both in the course of fulfilling the contract and afterwards.

## **16 Other provisions**

- 16.1 Should provisions of these terms and conditions be or become invalid or should gaps be found in them, this shall not affect the validity of the remaining provisions. In place of the ineffective provisions or to fill the gap, an appropriate provision should come into effect which, as far as possible, comes closest to what the contracting parties would probably have wanted according to the meaning and purpose of these terms and conditions.
- 16.2 Changes and additions to these terms and conditions can only be agreed in writing.
- 16.3 Contracts concluded based on these terms and conditions are exclusively subject to Austrian law, to the exclusion of reference standards and the UN Convention on Contracts for the International Sale of Goods.
- 16.4 The place of jurisdiction for all disputes is exclusively the competent court in Vienna Inner City.

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