

SCOOP & SPOON

VIENNA LONDON GRAZ

General Terms and Conditions for the Development of Software

London, 2 May 2016

1. Definition, scope and validity

1.1) SCOOP & SPOON limited with its registered office at 27 Soho Square, London W1D 3AY, Companies Register number 7932629, UID No.: GB132103966, is hereinafter referred to as the Contractor.

1.2) The Client is a customer of SCOOP & SPOON Limited that has entered into a contractual relationship for the development of software.

1.3) The current version of the General Terms and Conditions of SCOOP & SPOON Limited apply to the provision of services where the specification of said services makes express reference to these General Terms and Conditions or where no other General Terms and Conditions have been agreed.

1.4) The scope and deadlines for the contractual provision of services and level of corresponding remuneration are stated in the relevant quote (individual contract).

1.5) Where appropriate, the operating concept (hosting service for the contractual subject-matter and incorporation of content into the contractual subject-matter) is governed by a separate agreement (individual contract)

1.6) Regulations to the contrary are only valid where SCOOP & SPOON Limited has expressly agreed this in writing (individual agreement).

1.7) The contractual relationship between Client and Contractor comes into existence when the contractor is appointed once the quote that has been prepared by SCOOP & SPOON Limited is signed.

2. Service provision by the contractor

On the basis of the preliminary analysis carried out, the contractor creates the contractual subject-matter in the following three phases:

2.1) Specification phase

In the specification phase, it is determined which functional and non-functional requirements the software needs to meet ("What needs to be done?"). A basic concept is then devised for implementing these requirements ("How does it need to be done?").

Functional requirements are presented as user stories. User stories describe the desired functionality in words from the user's point of view. They are prioritised with the client and drafted in a list (product backlog).

Working with the client, the necessary non-functional requirements are specified. This includes in particular unsupported devices and operating systems, expected volumes and interfaces required with other systems. The contractor uses this information to develop a basic concept for the technical implementation of the software.

Based on this information, the contractor specifies the time required for the development of the contractual subject-matter (delivery period) and the bindingly agreed fee for the entire project. This may entail deviations from the scope of the contractual performance stated in the quote, which may give rise to new or unmentioned requirements. Likewise, the price and/or delivery period may change. Should this be the case, an exceptional modification to the quote will be made, or the right or termination referred to in Clause 10 may be exercised.

Furthermore, the operating concept for the ongoing operation of the contractual subject-matter will be determined in consultation with the Client, in terms of content and price and included in the price is a maximum number of workshops.

Workshops of a maximum duration of 6 hours (exact period stated in the individual contract) to take place at the Graz, London or Vienna sites are included in the price.

At the end of the specification phase, the Contractor submits the developed functional and non-functional requirements, the basic concept for the technical operation of the software and the operating concept to the client as the 'specification phase end-result'.

Clause 4 of these General Terms and Conditions applies to acceptance.

The costs of the specification phase account for 25% of the quote price.

2.2) Design phase

In this phase, the screen design and interaction design for the contractual subject-matter are created. These designs are the basis of the subsequent implementation phase. As appropriate, on the basis of the 'specification phase: end-result' the functional and non-functional requirements and basic concept for the technical implementation are adapted and specified.

Included in the price and forming an integral part of the specification phase are workshops with the Client, up to the maximum number stated in the quote (individual contract),

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each workshop for a period of up to 6 hours at the Graz, Vienna or London sites.

At the end of the design phase, the Contractor submits the screen and interaction design and adapted basic concept for the technical implementation, as appropriate, adapted functional and non-functional requirements to the client as the 'design phase end-result'.

Clause 4 of these General Terms and Conditions applies to acceptance.

The costs of the design phase account for 25% of the bindingly agreed fee pursuant to Clause 2.1.

2.3) Implementation phase

In the implementation phase, based on the 'design phase: end-result', the Contractor develops the programming for the software that forms the contractual subject-matter. Interim results are presented on a continuous basis and agreed with the client.

If the Client requests changes with respect to the end-results of the design phase, the Contractor shall implement such changes insofar as they do not result in extra costs to the contractor and provided that any changes to delivery periods are jointly agreed. Should this not be the case, Clause 4 applies.

The Client declares its agreement that dependent upon the target platform and end devices, graphic and technical guidelines may be changed slightly by the contractor in order to facilitate the roll-out and fitness for purpose of the contractual subject-matter.

At the end of the implementation phase, the Contractor provides the Client with the 'implementation phase: end-result' in the form of a go-ahead (Go Live) for the contractual subject-matter.

Clause 4 of these General Terms and Conditions applies to acceptance.

The costs of the implementation phase account for 50% of the bindingly agreed fee pursuant to Clause 2.1.

3. Duties and obligations of the client

3.1) In addition to the specification to be jointly prepared, the Client provides all information and content that needs to be used by the contractor for the subject-matter of the agreement, including the relevant test data. The test data provided must be sufficiently wide-ranging in scope for the contractual subject-matter to be sufficiently tested for its fitness for purpose and therefore its ability to fulfil the agreement. Data must be correct in content and supplied in a timely fashion for the proper fulfilment of the agreement.

3.2) Content is provided by the Client for subsequent processing by the Contractor exclusively in electronic form and in a form that the contractor is able to use. If any content that is supplied provided contains errors or is incomplete, causing unplanned and/or extra work for the Contractor, any extra work will be invoiced to the client at the Contractor's current hourly rate and is to be paid in a timely fashion.

3.3) The Client gives assurance to the contractor that all content may be used and developed freely. The Client gives the specific assurance that it is in possession of all the required copyrights, including editing rights. The Client indemnifies the contractor against any claims by third parties based on the content provided by the Client.

3.4) The Client has to notify the Contractor about any legal requirements (such as E-Commerce laws, data protection laws, price indication laws, etc.) before the start of the project, insofar as those requirements have legal relevance concerning the project implementation and fulfilment of the contractual subject-matter. The Contractor will try to notify the Client about generally known, internet-related legal requirements, which could be relevant for the project. However, he has no obligation to notify of or check these legal requirements and/or their legally compliant implementation. The Contractor advises the Client to consider proper legal advice.

4. Acceptance and Change Requests

4.1) Within two weeks of procurement, the client should nominate a single person authorized for the final acceptance. If this is not the case, the contract's signatory becomes authorized for acceptance.

4.2) The client shall undertake a close examination of both partial or individual output presented by the contractor as part of the acceptance process within two weeks after its submission.

4.3) If the respective partial or individual output does not conform to the current agreements, the client will immediately – that is to say no later than two weeks after the submission for examination – inform the contractor in writing of these deficiencies.

4.4) In the case of severe deficiencies, the contractor will correct these deficiencies within a mutually agreed period of time. The contractor will then resubmit the work for another examination. The final acceptance may only be delayed by established, reproducible and at the same time severe deficiencies. These deficiencies, along with their verifiability and reproducibility, are to be protocolled by the client in a written form and forwarded to the contractor.

4.5) In the case of minor deficiencies, the contractor will

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correct these deficiencies within a mutually agreed period of time. The final acceptance will be regarded as effective once the deficiencies have been corrected. There will be no additional acceptance process.

4.6) If the client fails to present the contractor with a written list of deficiencies within two weeks after the initial presentation of partial or individual output, the work will be deemed to be fully accepted.

4.7) Change requests, especially with regard to function range, interfaces, volume, system architecture, data and programme structure, screen design or any other features of the subject of agreement will immediately be analysed by the responsible project manager and evaluated with regard to possible consequences for budget, scope and time period. Should one of these three areas become subject to change, the project manager will inform the client and propose a specific solution. This may either be charged as an additional expense to the client or compensated by the reduction of the remaining project scope.

4.8) The contractor is free to charge an appropriate additional fee for the requested changes. The set fees are subject to necessary additional time expenses as well as the contractor's hourly rate.

5. Copyright

5.1) Where the Client requires it for its agreed purposes, the Contractor gives the Client permission to use copyrighted work with regard to the contractual subject-matter.

5.2) The Contractor is entitled to include a reference to its authorship in a suitable place on the work and in the customary form. The Client is not entitled to remove it.

5.3) The transfer of the source code from the contractor to the client is not contractually due, neither for standard software nor individual software. The source code remains the absolute property of the contractor.

6. Fees

6.1) The parties jointly determine a provisional budget for the contractual performance stated in the quote, and this budget is stated in the quote. This budget is specified more precisely or confirmed in the specification phase as an integral part of the 'Specification phase: end-result'. It is only once the budget has been specified that the fee is deemed as being jointly agreed (price valid under civil law) with respect to contractual performance.

6.2) In addition to this fee, the Contractor is paid expenses for the following on submission of the relevant proofs: purchase of necessary hardware or software, necessary training and external consulting.

Expenses for travel outside Vienna, London or Graz are to be

invoiced to the client separately. Travelling time counts as working time.

6.3) Where the Client requires additional services or changes during the period of work, the Contractor may invoice the additional work arising from this separately at the hourly rate. This rule also applies where the Client fails to comply with or is late in complying with its duty to cooperate, thereby causing additional work for the Contractor.

7. Methods of payment

7.1) The fee agreed pursuant to Clause 6.1 plus any expenses pursuant to Clause 6.2 are due for payment within 14 days of invoicing without reduction in instalments in accordance with the phases defined in Clause 2.

Instalment 1 before the start of the specification phase: 25% of quote price

Instalment 2 on completion of the design phase: 25% of the agreed fee

Instalment 3 on completion of the implementation phase: 50% of the agreed fee

7.2) The fee calculated pursuant to Clause 6.3 is due for payment without deduction within 14 days of invoicing

7.3) Should the Client be in default of payment, the Contractor is entitled to demand legal default interest from the time of default.

8. Warranty and liability

8.1) The Contractor is not responsible for content or data of any kind provided by the Client. The Contractor is not obliged to check content or data for possible legal infringements.

8.2) It is jointly agreed that the Contractor is required to provide contractual subject-matter that is usable and fit-for-purpose for the end devices, operating system versions and browser versions defined in the quote. It is further jointly agreed that an adaptation of the contractual subject-matter for any further development of devices and/or operating system versions and/or system versions and/or browser versions does not come under the warranty, but may be implemented by the Contractor at the request of the Client in a new project with content and conditions that must be agreed once again.

8.3) The warranty period for each end-result item runs for 12 months from acceptance thereof, and the Contractor must notify any defects in any end-result item and replicability of said defects in writing.

8.4) Should a third party make a claim against the Contractor for any possible legal infringements arising from the content of the contractual subject-matter, the Client undertakes to

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indemnify the Contractor against third parties and to compensate the contractor for any costs incurred by the latter for possible legal infringements.

8.5) The Contractor may be held liable for any claims for compensation made by the Client for deliberate acts and gross negligence, of which the Client is required to provide proof. It is jointly agreed that liability for minor negligence is excluded.

9. Completion

9.1) The parties jointly determine a completion deadline for the contractual performance stated in the quote, and this has been stated in the quote.

9.2) This deadline is not binding for the Contractor where it cannot be adhered to for reasons attributable to the Client. This applies especially in the event that the client infringes its obligations pursuant to Clause 3 of these General Terms and Conditions.

10. Extraordinary termination

Either party may terminate the agreement early without a notice period with the following just cause:

10.1) If it becomes clear during the specification or design phase (refer to Clauses 2.1 and 2.2) that the requirements of the customer cannot be met for technical, content-related or time-related reasons or cannot be met within the quote price or within the bindingly agreed fee.

10.2) If an application to open insolvency proceedings against the assets of one of the parties to the agreement reaches court or the conditions are in place for opening such proceedings or rejecting such an application due to lack of assets.

10.3) If, despite a written warning from the other party, one of the parties to the agreement repeatedly fails to comply with the provisions of the agreement.

10.4) For ordinary or extraordinary termination, the Client undertakes to pay any costs so far incurred for the contractual performance by the Contractor for each phase started or already completed, and with no reduction.

11. Naming as a reference customer

Subject to compliance with data protection and confidentiality rules, the Contractor is entitled to describe the contractual performance in a general way as a reference project, identifying the Client by name and further entitled to publish such a description. This also includes the use of trademark protected logos, product descriptions and other trademarks of the client. The Client has the right to refuse to be named as a reference customer. Any refusal must be

made in writing.

12. Amendments and additions

Changes and additions only come into legal effect if confirmed in writing in an integral document signed by both contracting parties. This formal requirement also applies to dispensing with the formal requirement itself.

13. Severability clause

Should one or more of the provisions be void or ineffective or become ineffective due to subsequent circumstances or should there be a loophole in the agreement jointly identified by both parties, the validity of the remaining provisions will remain unaffected. If this happens, the parties undertake to update the agreement with an effective provision with a legal and commercial intent corresponding to the invalid or incomplete provision.

14. Place of performance, place of jurisdiction and applicable law

14.1) The place of performance and sole place of jurisdiction for any disputes arising from the agreement is the location of the Contractor's company office.

14.2) The agreement is subject solely to the substantive law of England and Wales.