

PDV Service and Solutions Terms and Conditions

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Last updated: 3/1/2025

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1. General Provisions

- a) These Service and Solutions Terms and Conditions apply to the extent that PDV refers to them in its contractual documents (quotes, order confirmations, service descriptions, statements of work or contracts). Should these Service and Solutions Terms and Conditions come into conflict with any other contractual documents concluded between you and PDV, the latter shall take precedence.
- b) If these Service and Solutions Terms and Conditions are applicable, your general terms and conditions, including general terms and conditions of purchase and delivery, do not apply. Said terms and conditions do not apply even if you refer to them in other contractual documents, for example, in an order or purchase order, and PDV does not expressly object to their applicability or PDV performs services in such cases without reservation and in knowledge of your general terms and conditions or general terms and conditions of purchase and delivery.
- c) These Service and Solutions Terms and Conditions do not apply to the sale of hardware and software, the licensing thereof, or to the arrangement of manufacturer services. In such cases, PDV's Terms and Conditions for Sale and Agency Services apply. These Service and Solutions Terms and Conditions apply only to the provision of services or work that PDV itself is directly and contractually obliged to provide.

2. Deliverables

- a) PDV provides services that are precisely defined in advance, and in many cases, standardized. The deliverables are specified expressly and exhaustively in the contractual documents. PDV is not obliged to provide any services beyond this.
- b) Should anything be unclear, especially with regard to the deliverables, or should you require deliverables beyond those specified, please be sure to ask PDV before you conclude the contract or place an order.
- c) PDV undertakes to provide the services properly and performs the contractually agreed work on its own responsibility. To this end, PDV employs a certified quality management system (in accordance with DIN EN ISO 9001) for the scope of application "Trade in products and provision of services related to the IT

infrastructure of data centers” and a certified information security management system (in accordance with ISO / IEC 27001) for the scope of application “Provision of managed services.”

- d) PDV technical staff are not authorized to make contractual amendments or supplements. This is reserved exclusively for the management of PDV, its authorized signatories (*Prokuristen*) or general agents, as well as its sales department.

3. Cooperation

- a) The attainment of your objectives under the contract concluded with PDV depends on the effective cooperation of all parties involved. Your assistance and that of any service providers you hire play a decisive role in the success of our working relationship. Therefore, the parties to the contract have a mutual obligation to provide each other with the information, data and documents they require in order to perform the contract in an organized manner if and when requested to do so, and to provide access, including remote access, to the systems that fall under the scope of the contract.
- b) It is your responsibility to provide, either yourself or via a service provider of your choice, what is expedient for the provision of services by PDV, but does not constitute the contractually agreed deliverables to be provided by PDV. Unless otherwise expressly agreed in the contractual documents, this means that you are responsible in financial and operational terms for the procurement and operation of the hardware, software, materials, tools, third-party services and other resources required in order to provide the services. To this end, you are required to work with PDV's own qualified employees and contacts and to ensure that the necessary system requirements are met in order to achieve and maintain the smooth functioning of the systems.
- c) In particular, you are required to continuously monitor the systems covered by the contract, to report any defects to PDV without undue delay, to take the advice provided by PDV concerning the analysis of the problem into account, to an extent that can be reasonably expected, and to forward to PDV any information available

to you that is necessary to remedy the defect. This applies in particular to error messages to ensure PDV has the best possible support when troubleshooting.

- d) It is PDV's recommendation, and your responsibility, to maintain a test system, or have a test system maintained, in order to check, in particular, recommended changes and troubleshooting procedures, so that any undesired effects of planned changes in the live system can be anticipated and averted as far as possible.
- e) Provisions containing more specific details in this regard, especially those governing responsibilities and system requirements, are reserved for the other contractual documents, in particular the service descriptions.
- f) You are obliged to contact PDV before concluding a contract or placing an order if you have any doubts about your or a third party's ability to estimate or provide the supplies and cooperation required.

4. Data Backups

Unless otherwise agreed, you are responsible for ensuring that your data is backed up properly and that your current data from data sets stored in machine-readable form can be reproduced with a minimal and reasonable amount of effort at all times.

5. Place of Performance

Insofar as it is not necessary for the services to be performed on your premises, PDV may freely choose the place of performance and is in particular entitled to provide services remotely.

6. List of Prices

- a) Fees are set out in the contractual documents (quotes, order confirmations, service descriptions, statements of work or contracts) and cover only the services expressly specified therein. Any additional services commissioned will be charged in addition based on the time and effort incurred. Unless otherwise agreed, the

provisions on travel expenses set out in the attached PDV list of prices apply, together with the provisions on hourly rates and travel times in the event of reimbursement based on the time and effort incurred.

- b) Unless otherwise agreed, you are responsible for all costs incurred in connection with the provision of the services, such as taxes, charges, customs duties and payment transaction fees. Any expenses, travel and accommodation costs incurred are to be reimbursed by you as they arise and to a reasonable extent.

7. Subcontractors

Unless otherwise agreed, PDV is entitled to engage subcontractors to fulfill its performance obligations. Notwithstanding the above, PDV remains directly responsible and liable to you in respect of the fulfillment of its contractually agreed performance obligations.

8. Force Majeure

PDV is not responsible for delays or failures to perform its services caused by force majeure (“force majeure”), which includes, in particular, war, embargoes and sanctions, acts of terrorism, sabotage, natural disasters, power failures, strikes, lockouts, official orders, general disruptions to telecommunications or similar events, as well as epidemics, pandemics, quarantine restrictions or other restrictions resulting from measures imposed by public health authorities, and/or circumstances within your control, and is entitled to postpone the provision of the affected service accordingly, including an appropriate lead time.

9. Acceptance of Deliverables

- a) If the services to be performed by PDV constitute deliverables requiring acceptance, the acceptance of the deliverables must be provided without delay, however, by no later than seven calendar days after delivery (“review period”).
- b) PDV is entitled to attend every acceptance, partial acceptance or performance of acceptance tests.

- c) Deliverables will be deemed to have been accepted if no defects preventing acceptance have been reported within the review period or if they have been used productively for a significant period of time after delivery.

10. Right of Offset and Retention

- a) You may only assert rights of retention or offset undisputed, legally established claims or claims that have reached a stage permitting a decision.
- b) Your counterclaims are excluded from the above contractual exclusion of set-off and the exclusion of the assertion of rights of retention based on the non-contractual and/or incomplete provision of the respective contractual service by PDV.

11. Services not Provided in Accordance with the Contract

- a) You are required to notify PDV in writing or in text form without delay if you find that a service has not been provided by PDV in accordance with the contract, and to provide a detailed specification of the same.
- b) Where you have duly fulfilled your obligation to provide information as set out in the previous paragraph, PDV is initially entitled and required to perform the affected service in accordance with the contract, without any additional costs being charged, within a reasonable period of time, provided that such subsequent performance of the service is possible and reasonable for both parties (subsequent performance). PDV is not under any obligation to provide subsequent performance if PDV is not responsible for the non-contractual provision of services; the presumption of conformity under Section 280 (1) (2) German Civil Code (*BGB*) applies (*mutatis mutandis*).
- c) If subsequent performance of a service that PDV is responsible for providing but did not provide in accordance with the contract is deemed to be impossible, unreasonable, or unacceptable, and essential elements of the service remain outstanding even after PDV has been given a reasonable extension to rectify the

situation, you are entitled (provided the statutory conditions are met) to terminate the contract for cause with immediate effect. In this case, PDV is entitled to payment for the services it provided prior to the termination taking effect. However, the entitlement to reimbursement as per sentence 2 above does not apply to services that are no longer of interest to you as a result of the termination. You are required to provide PDV with a full and detailed written statement specifying the services to which this applies within four weeks of its receipt of the termination.

- d) No further claims may be asserted for failure to provide the services in accordance with the contract. This does not apply to intent, gross negligence, representations and warranties, breach of fundamental contractual obligations (cardinal obligations, i.e. obligations where the breach of which jeopardizes the fulfillment of the purpose of the contract, the fulfillment of which is a prerequisite for the proper execution of the contract and the observance of which the other party generally relies on), within the scope of application of the German Act on Liability for Defective Products (*Produkthaftungsgesetz*) and in the event of injury to life, limb or health.
- e) Claims for services not provided in accordance with the contract become time-barred one year after the start of the statutory limitation period. The above curtailment of the limitation period does not apply in the case of intent, gross negligence, representations and warranties, breach of fundamental contractual obligations (cardinal obligations, i.e. obligations where the breach of which jeopardizes the attainment of the purpose of the contract, the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the other party generally relies on), within the scope of application of the German Act on Liability for Defective Products (*Produkthaftungsgesetz*) and in the event of injury to life, limb or health. In such cases, the statutory limitation period applies.
- f) PDV may demand adequate compensation for the investigation and/or rectification of a service that you have reported but has not actually occurred, i.e. it only allegedly fails to comply with the contract, or of a service that does not comply with the contract for reasons for which you are responsible.

12. Liability

- a) The liability of the parties is unlimited in accordance with statutory provisions for loss or damage resulting from injury to life, limb or health, or for loss or damage resulting from intent or gross negligence, as well as for loss or damage that falls within the scope of protection of a warranty provided, and to the extent that the scope of application of the Act on Liability for Defective Products is established.
- b) Where loss or damage other than that mentioned in the previous paragraph is due to a simple negligent breach of material contractual obligations (referred to as cardinal obligations), the liability of the parties is limited to compensation for a typical contractual foreseeable loss or damage. Material contractual obligations within the meaning referred to above are obligations where the breach of which jeopardizes the attainment of the purpose of the contract, the fulfillment of which is a prerequisite for the proper performance of the contract, and the observance of which the other party generally relies on.
- c) In all other respects, any further liability for loss or damage other than that set out in 12 a) above and arising from a simple negligent breach of obligations other than those set out in 12 b) above is excluded, irrespective of the basis in law.
- d) The limitations and exclusions of liability set out above also apply in respect of the personal liability of the parties' employees, agents, legal representatives and management bodies.

13. Confidentiality

As with PDV, you are obliged to maintain secrecy with respect to all confidential information that you receive in connection with the contractual relationship. As with PDV and its employees, you may only use this information for the purpose of performing the contract and ensure that your employees are also bound by this. This notwithstanding, you are entitled, to the same extent as PDV, to refer to the contractual relationship to an appropriate extent.

14. Data Privacy and Information Security

- a) You and PDV agree to comply with the relevant provisions, including but not limited to the General Data Protection Regulation (GDPR), when handling personal data, and to refrain from the unauthorized processing of personal data, and to ensure that your employees also comply with these provisions.
- b) Where necessary, the contracting parties agree to conclude an agreement on commissioned processing in accordance with Article 28 GDPR or a contract for data processing as joint controllers in accordance with Article 26 GDPR.
- c) PDV is obliged to ensure organizational, physical and operational information security within its area of responsibility. PDV ensures compliance with information security standards and requirements that, at a minimum, conform to ISO 27001 (in its most up-to-date version) with appropriate consideration given to the standards of the German Federal Office for Information Security (BSI).

15. Place of Jurisdiction and Applicable Law

- a) The exclusive place of jurisdiction is Goslar, Germany. However, PDV is also entitled, at its discretion, to take legal action against you at your usual place of jurisdiction.
- b) The laws of Germany apply exclusively, with the exception of standards relating to a different legal system; the application of the UN Sales Convention (CISG) is expressly excluded.

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