

## for On-Premises Software

These General Terms & Conditions (hereinafter referred to as "**Terms**") apply to all contracts concluded between Nemo GmbH (hereinafter referred to as "**Provider**") and its contract partners (hereinafter referred to as "**Customer**") whose subject matter of the contract is covered by these Terms. These Terms apply exclusively. Counter- confirmations or general terms & conditions of the Customer are hereby expressly rejected. This shall also apply if the Customer should specify that its own Terms take priority.

### A. **General**

#### 1. **Subject Matter of the Terms**

- B. Software license
- C. Support und Maintenance
- D. Consulting

#### 2. **Definitions**

The following terms have the meanings defined below unless otherwise indicated:

**"Quote"** means a quote the Provider submits to the Customer for one or more of the services specified in Clause 1. The Quote may also be referred to as "Order", "Order Confirmation", "Purchase Order" or otherwise.

**"Provider Software"** means software developed and licensed by the Provider.

**"Consulting Services"** means special software development, implementation and other IT services, apart from support and maintenance.

**"Documentation"** means the user documentation belonging to the Contract Software.

**"Individual Agreement"** means an Agreement concluded between the Provider and the Customer on the basis of a Quote for one or several of the services specified in Clause 1.

**"Error"** in the Contract Software is present if the Contract Software deviates from the product description when used in accordance with the Agreement and, as a result, prevents or unacceptably reduces the intended use by the Customer.

**"Third-Party Software"** means software products by third parties that are distributed by the Provider for use with the Provider Software.

**"Service Specification"** or **"Service Level Agreement"** or **"SLA"** means a document which precisely describes and specifies the services to be provided by the Provider.

**"Proalpha Group"** means Proalpha Holding GmbH and its subsidiaries.

**"Intellectual Property Rights"** means any rights associated with intangible assets resulting from intellectual and industrial creation. These include technical Intellectual Property Rights such as patents, utility model rights, design rights, integrated circuit layout design protection, as well as the trademark rights protected by the German Trademark Act and the copyrights.

**"Software Purchase"** means the purchase of an unlimited software license against a one-time payment of a licensing remuneration in advance.

**"Subscription License"** means the purchase of a limited software license against payment of a recurring licensing remuneration.

**"Support and Maintenance"** means the support and maintenance services provided for the Provider Software as set forth in the Individual Agreement and these Terms.

**"Trust Center"** means a website of the Provider or the Proalpha Group from which the Customer can retrieve certain contract documents specified in these Terms or in the Quote. The URL (Web address) of the Trust Center is: <https://www.nemo-ai.com/trust-center>

Certain documents, such as Service Specifications or SLA, can be provided in a space accessible only to customers. The corresponding access credentials shall be communicated to the Customer.

**"Update"** means a new version of the Contract Software. Updates may comprise new functions, improvements or changes to existing functions as well as adjustments to changed legal requirements.

**"Contract Software"** or **"Standard Software"** describes the Provider Software and/or Third-Party Software which is the subject matter of a specific Individual Agreement. Updates become part of the Contract Software after their provision.

#### 3. **Quote, Contractual Bases, Right to Change**

- (1) Declarations of acceptance by the Customer containing changes regarding the Quote by the Provider are considered a rejection of the original contract offer and will only lead to the conclusion of an Individual Agreement if the Provider explicitly confirms them in writing.
- (2) An Individual Agreement shall also be concluded without an explicit declaration of acceptance of the Quote if the Customer's actions indicate the intention to perform the Individual Agreement.
- (3) The Individual Agreements are subject to the following order conclusively:
  - a) Quote;
  - b) The provisions of these Terms;
  - c) Other documents contained or referenced in the Quote, such as Service Specifications, SLA, License Agreements, etc.
- (4) Service Specifications or SLAs shall be provided to the Customer in the Trust Center or in other electronic ways. The Provider reserves the right to consistently update and modify these on its own behalf for all customers receiving similar services as long as the essence of the service is retained. The latest applicable version shall be provided to the Customer for download from the Trust Center or in any other electronic way and takes effect on the date of its announcement. The Customer is not entitled to the continued provision of individual service features.

#### 4. **Terms for Continuing Obligations**

- (1) In case of continuing obligations (e.g. Subscription License, Support and Maintenance, Hosting Services), the commencement of service, the minimum term and periods of notice result from the respective Individual Agreement.

- (2) Unless expressly specified in the Individual Agreement, continuous obligations start upon delivery of the corresponding Contract Software and shall be concluded for a minimum term of three (3) years. Afterwards, the corresponding Individual Agreement shall always be extended automatically by another year if it is not properly terminated in writing by either Party with a notice period of six (6) months before the end of a contract year.
- (3) An early or partial termination is not possible. The right to termination for good cause shall remain unaffected.
- (4) Notice of termination must be given in writing; text form is not sufficient.

#### **5. Prices, Terms of Payment, Customs Duties**

- (1) The relevant prices for licenses, deliveries and services result from the Quote and the Provider's price list.
- (2) All prices are quoted net of statutory value-added tax.
- (3) Invoices sent by the Provider shall be due for payment without deduction within fourteen (14) calendar days of the invoice date.
- (4) If the Provider provides deliverables and services to the Customer abroad, the customs duties shall be paid by the Customer.

#### **6. Remuneration for Continuing Obligations, Indexation**

- (1) In case of continuing obligations (e.g. Subscription License, Support and Maintenance Services, Hosting Services), the amount of the remuneration to be regularly paid by the Customer is set forth in the Individual Agreement. The regular remuneration shall be charged by the Provider annually in advance. Partial billing during the first year is possible.
- (2) If the wage cost index by the Federal Statistical Office of Germany in the field of "Provision of Information Technology Services J62" for Germany on the basis of 2022 = 100 increases compared to the index published at the commencement of service, the Provider may demand an increase of the relevant remuneration. The benchmark for the increase shall be the change in the index after the commencement of service, insofar as such an increase is equitable. The change becomes effective at the start of the contract year (calculated from the date of the commencement of service). The above shall apply accordingly to any additional index change compared to the respective last change of the remuneration. If the above index is no longer published, the relevant successor index shall be used accordingly for the price increase issue.

#### **7. Subcontracting**

The Provider shall be entitled to commission subcontractors for the service provision (including other companies of the Proalpha Group).

#### **8. Cooperation Obligations of the Customer**

- (1) Insofar as the provision of services by the Provider requires the cooperation of the Customer, the Customer shall provide the necessary cooperation and services free of charge for the Provider.
- (2) Individual cooperation obligations may be specified in the Service Specification.
- (3) The Provider shall not be responsible for delays in the service provision resulting from the Customer or a third party employed by the Customer failing to fulfill their required cooperation or provision obligations in a timely manner, or does so only partially or poorly. The Provider may charge the Customer separately for any additional work arising for the Provider, without prejudice to any other rights.

#### **9. Confidentiality**

- (1) Each Party undertakes to treat confidential information of the other Party as confidential and to use it only for purposes related to the performance of its contractual obligations, and to restrict access to confidential information to persons who need it for contractual purposes. Each Party may disclose confidential information to the extent required by law, provided that it informs the other Party in advance of such forced disclosure (to the extent permitted by law) and provides reasonable assistance to appeal against the disclosure.
- (2) Information shall be treated as confidential if it is expressly designated as such by one Party or if the confidentiality can be derived from the circumstances. This includes the price information quoted by the Provider.
- (3) The obligation to maintain confidentiality shall persist for 3 more years following the end of the Individual Agreement. A legal obligation to maintain confidentiality remains unaffected.

#### **10. Customer Data**

- (1) As between the Provider and the Customer, all right, title and interest in and to the Customer's data and all intellectual property rights therein shall be exclusive property and solely owned by the Customer.
- (2) To the extent the Provider has access to the data of the Customer, the Provider shall take all technical and organizational measures that are customary according to the state of the art of technology to sufficiently protect the Customer's data against unauthorized access, interference, destruction or loss.
- (3) To the extent the Provider processes personal data for the Customer that are subject to the General Data Protection Regulation (GDPR), the Parties shall conclude a Data Processing Agreement according to Article 28 GDPR. It can be downloaded from the Trust Center and shall apply in addition to this Agreement. The Data Processing Agreement applies mutatis mutandis to the contractual performance by members of the Proalpha Group that act as subcontractors.
- (4) The Customer shall grant the Provider and any subcontractors the right to perform all actions relating to the customer data that are required for the service provision.

#### **11. Intellectual Property Right Violations**

- (1) If a third party makes a legally valid claim against the Customer that the contractual use of a deliverable and/or service provided by the Provider infringes the Intellectual Property Rights of that third party, the Provider shall be obligated, at its choice and at its own expense, to either (1) change or replace the deliverable and/or service concerned such that the intellectual property rights of the third party are no longer infringed or (2) to procure for the Customer the right to continued use of the deliverable and/or service concerned in accordance with the Agreement. If the Provider is unable to do so on reasonable terms, the Customer shall be entitled to the following rights: (1) if the claims of the third party concern the Contract Software which the Customer has purchased from the Provider, the Customer shall be entitled to rescind the purchase of the Contract Software infringing the Intellectual Property Rights of the third party; (2) if the claims of the third party concern Support and Maintenance Services which the Customer has received from the Provider, the Customer shall be entitled to terminate for cause without notice period the Individual Agreement on the Support and Maintenance Services that

infringe the Intellectual Property Rights of the third party;  
(3) if the claims of the third party concern Consulting Services which the Customer has received from the Provider, the Customer shall be entitled to rescind the Individual Agreement on the Consulting Services that infringe the Intellectual Property Rights of the third party.

- (2) Furthermore, the Provider shall indemnify the Customer from all undisputed or court awarded (in final instance) claims of the third party that are based on the fact that the contractual use of a deliverable and/or service provided by the Provider on the part of the Customer infringes the Intellectual Property Right of the third party. This shall also include any necessary court and legal remuneration incurred by the Customer as a result thereof. The Provider shall compensate the Customer for any further damages within the scope of the liability agreed upon in these Terms.
- (3) The Customer shall notify the Provider immediately of any Intellectual Property Right infringement claim made against the Customer. The Customer shall not admit the claims of third parties about an alleged Intellectual Property Right infringement without prior written consent from the Provider. If the Customer stops using the deliverable and/or service accused of alleged Intellectual Property Right infringement for reasons relating to mitigation of damage, the Customer shall inform the third party that the discontinuation shall not mean any acknowledgment of the Intellectual Property Right infringement claimed by the third party.
- (4) The Customer shall reasonably agree on any defense against the third party in advance with the Provider and shall, to the extent legally possible, permit the Provider to conduct the defense against the third party, including any settlement negotiations.
- (5) Insofar as the Customer is responsible for the Intellectual Property Right infringement, claims of the Customer against the Provider due to Intellectual Property Right infringement are excluded. This applies especially if the Intellectual Property Right infringement is based on the fact that the Customer used the deliverable and/or service causing the Intellectual Property Right infringement in deviation of the provisions of these Terms and/or the arrangements in the Individual Agreement.

## 12. Liability

- (1) For damages resulting from injury to life, body or health of a person, for damages resulting from the breach of a warranted condition of a material as well as for damages for which the Provider is liable in accordance with the German Product Liability Act (ProdHaftG), the Provider shall have unlimited liability in accordance with the legal provisions. In addition, the Provider shall have unlimited liability in accordance with statutory provisions for breaches caused intentionally or through gross negligence.
- (2) The Provider shall be liable for violations caused by slight negligence, for whatever legal reason, if an important contractual obligation is violated and its fulfillment alone enables proper execution of the concerned Agreement and which the Customer may rely on. Any claim for damages due to a breach of essential contractual obligations is limited to typical, foreseeable damage. Regarding such typical and foreseeable damages, the Parties agree that the amount of liability per contract year shall be limited to eighty percent (80%) of the charges paid by the Customer in the last twelve (12) months prior to the occurrence of the event under the Individual Agreement giving rise to liability, whereby for a Software Purchase the prepaid license price is based on thirty-six

(36) months from the delivery of the Contract Software in equal shares.

- (3) Insofar as the Provider is obligated to compensate for the restoration of destroyed or lost data due to the breach of an obligation, compensation shall be limited to such efforts which would have been necessary for the restoration of the data if the Customer properly had backed up their data, but not beyond the amount which has to be paid by the Provider in accordance with the liability limitations stipulated herein.
- (4) Any further liability of the Provider shall be excluded, especially the Provider's liability for loss of profits and secondary damages of the Customer. This shall not apply to any claim for indemnification by the Customer in the event of Intellectual Property Right infringements.
- (5) The liability limitations stipulated herein shall also apply to the legal representatives, organizations, subcontractors, and vicarious agents of the Provider insofar as they are personally liable to the Customer.

## 13. Right of Audit

The Provider shall be entitled to audit the contractual usage of the Contract Software by the Customer. For this purpose, the Provider may request information about all usage data of the Contract Software and Updates from the Customer. The Provider may also inspect the required usage data at its own discretion at the respective installation site of the Customer or have it verified by an auditor or IT expert commissioned by the Provider.

## 14. Customer Reference, Usage Analysis

- (1) The Customer agrees that the Proalpha Group may use the Customer's company logo and name for business purposes, in particular for marketing and advertising purposes as a reference of the Proalpha Group. The Customer declares to be the owner of the rights.
- (2) The Customer agrees that the Provider and companies of the Proalpha Group may collect, save and analyze information obtained from the Customer's use of the contractual services for the purpose of product development, and may use it – in an aggregate form that does not identify the Customer or any other person – for industry analyses, benchmarking, and other analytics.

## 15. Assignment

The Customer may neither partially nor wholly assign contractual rights to a third party without the Provider's prior written consent. This does not include any money claims of the Customer.

## 16. Side Agreements and Written Form Requirement

The provisions of these Terms and the respective Individual Agreement shall constitute the entire agreement of the Parties. No tacit, oral or written side agreements have been made. Amendments or supplements to contractual provisions concluded between the Parties shall only be effective if they are agreed in writing. The same shall apply to a change to the written form requirement.

## 17. Governing Law

These Terms as well as all Individual Agreements shall be governed by the law of the Federal Republic of Germany, excluding any choice of law provision and to the exclusion of the UN Sales Convention (CISG).

## 18. Jurisdiction

The exclusive place of jurisdiction for all disputes arising from and in connection with these Terms or an Individual Agreement is Bonn, Germany.

## 19. Export Restrictions

The Customer is aware that the use of the deliveries and services of the Provider may be subject to export and import restrictions. The Provider's fulfillment of the Agreement is subject to the condition that the fulfillment is not impeded by any obstacles due to national and international export and import regulations or any other statutory provisions. The Customer assures that neither itself nor its personnel are itemized on a national sanction list (or any equivalent list), nor may the Customer allow its users to access or use the Provider's deliverables and services in violation of export control laws and regulations.

## 20. Severability Clause

The ineffectiveness of individual provisions of these Terms does not affect the validity of the remaining contract content. Should a provision of these Terms or a provision of any other part of the Agreement be or become invalid, the void provision shall be deemed replaced by a legally valid provision that comes closest to the commercial intentions of the Parties. The same shall apply to filling a gap.

## B. Software License

### 1. Delivery of the Contract Software

- (1) The Contract Software and the corresponding license key are provided to the Customer by electronic means ("electronic delivery").
- (2) The installation and configuration of the Contract Software is not included in the license price and shall be separately agreed on in writing according to the terms and prices offered by the Provider.

### 2. Scope of Delivery and Functions of the Contract Software

- (1) The Contract Software shall always be delivered to the Customer in the latest version as per the date of the purchase order. The Contract Software shall always be delivered in the object code.
- (2) System requirements, conditions of use, and the functional scope of the Contract Software are ultimately determined by the Provider's product description applicable at the time of delivery. The Provider does not owe a quality of the Contract Software beyond that scope. Insofar as the Customer requires additional functions of the Contract Software other than those agreed in the Individual Agreement, this shall be agreed separately in writing between the Parties in an Individual Agreement for Consulting Services.
- (3) The Provider reserves the right that the Contract Software must be registered and activated during the installation.

### 3. Customer's Rights to Use the Contract Software

- (1) The Provider grants the Customer the non-exclusive right to use the Contract Software as intended and exclusively for its own business purposes. Use by or for third parties, including the use of the work results generated by the Software, shall not be permitted.
- (2) The duration of the right of use results from the Individual Agreement, in case of doubt from the agreed payment method of the licensing remuneration. For a Software Purchase, the right of use shall be unlimited. For a

Subscription License, the right of use shall be limited to the period covered by the paid remuneration.

- (3) The right of use is specified and limited according to the license model described or referred to in the Individual Agreement (e.g. to a certain number of users). Any additional use requires the prior written consent of the Provider and requires the Customer to pay the Provider the relevant purchase price for the extension of the right of use.
- (4) The Customer may only reproduce the Contract Software if this is necessary for the use in accordance with the provisions and the Agreement, e.g., install it in the mass storage area and load it to the memory. The Customer may duplicate the Contract Software within the scope required for the agreed use.
- (5) The Customer may only make modifications to the Contract Software with the express written consent of the Provider or due to mandatory statutory regulations.
- (6) The Contract Software or the rights to use it may not be transferred to third parties.
- (7) The right of use is subject to full payment of the licensing remuneration.

### 4. Third-Party Software, Open Source Software

- (1) Third-Party Software is subject to the license terms of the respective provider. They are provided to the Customer in the Trust Center or as a link to the website of the third-party provider.
- (2) Notwithstanding the Customer's aforementioned rights to use the Contract Software, the terms of the open source software licenses applicable to relevant parts of the Contract Software or any components provided with it shall remain unaffected. Insofar as the terms of such open source license conflict with these Terms, the terms of the open source software license shall take precedence.

### 5. Cooperation Obligations of the Customer

- (1) The Customer shall be responsible for creating the system requirements and conditions of use required for the proper operation of the Contract Software and to sustain them for the useful life.
- (2) The Customer shall keep itself up-to-date by following the documentation provided by the Provider and the corresponding supplements or instructions, and inform the users accordingly.
- (3) The Customer shall take appropriate measures to minimize any damages in case of failures or malfunctions of the Contract Software (e.g., regular backups and monitoring of the processing results in regular cycles in accordance with the generally accepted rules of technology).
- (4) The Customer shall take the usual measures in accordance with the generally accepted rules of technology in order to protect the Contract Software against unauthorized use and to pass on this obligation to any hosting provider commissioned by the Customer.
- (5) After a subscription license has expired, the Customer must ensure that the Contract Software is not used any further and that it is deleted from all computers and data carriers of the Customer, and must prove this at the request of the Provider.
- (6) When hardware is replaced, the Contract Software must be deleted from the old hardware.

### 6. Contract Software Warranty

- (1) Defects in the Contract Software shall be corrected by the Provider after written notification by the Customer within a reasonable period of time. This shall be done at the discretion of the Provider either by delivering an update



or by giving reasonable instructions. The warranty period for the Software Purchase shall be one (1) year from delivery of the Contract Software. The delivery of an Update does not start a new warranty period.

- (2) Insofar as the Provider requires access to the system environment of the Contract Software for analyzing or fixing defects, the Customer will immediately grant the Provider the necessary access upon request. If the Provider is unable to remedy the defect of the Contract Software, if the remedy is delayed beyond a reasonable period of time, or if the remedy fails for any other reason, the Customer shall be entitled to rescind the Agreement or demand a price reduction. The right to rescindment shall however be applicable solely in case of a defect which either impedes or significantly reduces the contractual use of the defective Contract Software.
- (3) The warranty is excluded: (a) if the Customer does not use the Contract Software in the agreed upon system environment or under the agreed terms of use, (b) for malfunctions of the Contract Software caused by the system environment of the Contract Software, (c) if the Customer or a third party not belonging to the Proalpha Group has modified the Contract Software on behalf of the Customer.
- (4) The Provider shall not be responsible for delays in correcting a defect or finding a workaround if the delay is based on the fact that the Customer does not fulfill their cooperation obligations for the analysis and/or correction of a defect, or if the report of a defect by the Customer is incomplete or the Customer does not submit all information, documents and files requested by the Provider which are required for the analysis and correction of a defect.
- (5) If it is revealed that no defect exists and the Customer would have been able to realize so if it had analyzed the issue more carefully, the Provider is entitled to separately charge the Customer for the analysis of the alleged error reported as a defect by the Customer based on the applicable prices of the Provider.

## **C. Support and Maintenance**

### **1. Subject of Service**

- (1) The Provider shall provide the following Support and Maintenance Services:
  - a. Provision of a Service Desk for receiving and processing reports of incidents,
  - b. Debugging the Contract Software,
  - c. Delivery and provision of Updates and
  - d. Delivery of a new program copy of the Contract Software if the Customer requires a replacement copy to use the acquired Contract Software. The delivery of another copy shall not constitute any additional rights of use.
- (2) The Support and Maintenance Services outlined above may be further specified in a Service Specification or Service Level Agreement (SLA).
- (3) For Third-Party Software, the Support and Maintenance Services may differ from the Service Specification or SLA. These deviating or additional terms may be provided to the Customer in the Trust Center. The Provider may define another service than the one set out in the Service Specification or SLA if the provider of the Third-Party Software changes their support and maintenance services. Support and maintenance services for Third-Party Software may be provided directly by the third-party provider.
- (4) The Provider provides the services specified here for Standard Software only. If the Customer also wishes to

receive Support and Maintenance for software individually developed for the Customer (e.g., customizations/modifications of the Contract Software), such services shall be subject to charge and agreed separately in writing.

### **2. Delivery and Provision of Updates**

- (1) The Provider informs the Customer about the availability of Updates for the Contract Software under Support and Maintenance. The Customer may then demand the Update concerned from the Provider. This demand is subject to the regulations on the electronic delivery of software. The installation of an Update is not part of the Support and Maintenance Services to be provided by the Provider and shall be agreed separately in writing and remunerated separately at the Provider's prices then applicable.
- (2) Updates may only be installed in such system environments and under such conditions of use which the Provider has listed as certified in the product description applicable for the Update. In order to ensure that an Update is compatible with the Customer's system environment (system software, database software, hardware, operating system, etc.) and the conditions of use present at the Customer's, the Customer shall first test the Update for the required compatibility of the Update with the Customer's system environment and the conditions of use in a test environment before installing the Update in the productive environment, and install the Update in the productive environment only if the tests were successful. As part of these tests, the Customer shall also check whether the respective Update is compatible with the processes and functions implemented at the Customer's.

### **3. Release Maintenance**

- (1) In general, the Provider provides Support and Maintenance Services for the current version only. Whether and to which extent the Provider also provides such services for preceding versions is at the sole discretion of the Provider and may be announced in the Service Specification or on the website of the Provider. The Customer may not claim Support and Maintenance Services for older versions.
- (2) If the Customer wishes to receive Support and Maintenance Services for preceding versions not generally supported by the Provider, this requires a separate written agreement at the Provider's prices then applicable, if and to the extent the Provider offers such services.

### **4. Discontinuation of Products**

- (1) The Provider shall have the right to discontinue Support and Maintenance for Provider Software uniformly for all Customers by giving written notice of the discontinuation with a notice period of twelve (12) months. In this case, Support and Maintenance remuneration paid in advance will be partially refunded.
- (2) In the event that third parties discontinue their Support and Maintenance Services for Third-Party Software, the Provider may discontinue Support and Maintenance for such Third-Party Software at the same time.

### **5. Support and Maintenance Remuneration**

- (1) The remuneration for the Support and Maintenance Services is defined in the Quote on the basis of the licenses granted to the Customer.
- (2) When the Customer subsequently purchases further modules or other license extensions, they shall be

automatically included in the existing Support and Maintenance Agreement as of provision.

- (3) The Support and Maintenance Remuneration shall be payable upon the provision of the Contract Software or additional individual parts.

#### **6. Cooperation Obligations of the Customer**

- (1) The Customer shall immediately report errors in the Contract Software to the Provider and support the Provider with the error analysis and remediation to a reasonable extent. The ticket must be provided with as detailed information as possible, as might be specified in the Service Specification or SLA.
- (2) Updates provided by the Provider for error remediation shall be downloaded and installed by the Customer immediately after such updates are provided by the Provider.
- (3) The Customer shall take appropriate measures in case the Contract Software does not work properly (e.g., regular data backups). The Customer shall perform a backup of their data before installing any Update.

#### **D. Consulting Services**

##### **1. Service Provision by the Provider**

- (1) The Provider shall provide the Consulting Services specified in the Individual Agreement in accordance with the generally accepted rules of technology applicable at the time of the service. Dates are usually non-binding planned values the Provider specifies for the Customer based on the experience from comparable tasks. Exceptions apply only if the Parties have specifically agreed on a fixed date for deliveries and services.
- (2) If the timely service provision by the Provider requires certain cooperation on the part of the Customer, the agreed delivery and service dates shall be postponed accordingly if the Customer fails to fulfill the required cooperation in a timely manner, or does so only partially or poorly. Further rights of the Provider remain unaffected by this.
- (3) Unless the provision of services absolutely requires on-site work from the Provider or the Parties have expressly agreed in writing that on-site work shall be performed by the Provider in individual cases, the Provider shall be entitled, at its own discretion, to also provide Consulting Services from the respective place of work of the employee who performs the work in question for the Provider. Insofar as the Provider is entitled to commission subcontractors according to the provisions of these Terms or the arrangements in an Individual Agreement, these regulations shall also apply to the services to be provided by the subcontractor.
- (4) If the programming of an interface or other computer program to be developed for the Customer's specific requirements is the subject matter of an Individual Agreement, the interface or computer program concerned shall be delivered and provided in the object code.

##### **2. Service Changes**

- (1) If the Customer requests modifications or amendments to the scope of functions agreed in the Individual Agreement ("change requests") from the Provider after the Individual Agreement has been concluded, the Provider shall verify this request within an appropriate period of time and inform the Customer whether, and if so under what conditions, the Provider is willing to implement the change request desired by the Customer.

- (2) If the review of a Customer's change request requires a thorough analysis of whether and how the Provider can implement the change request desired by the Customer, the Provider shall inform the Customer accordingly, indicating the remuneration applicable for such an analysis. If the Customer then decides to commission the Provider to conduct the analysis, the Parties shall conclude a corresponding written agreement for this, which shall be subject to the regulations present in these Terms in the same manner as the original Individual Agreement whose scope of functions is modified by the change request.
- (3) The prices for a Customer's change request shall be based on the prices agreed by the Parties in the respective Individual Agreement.

##### **3. Deployment of Personnel by the Provider**

- (1) The personnel deployed by the Provider is exclusively subject to the instructions given by the Provider. The Customer shall not be entitled to give the Provider's personnel technical or disciplinary instructions.
- (2) If required, the Provider may replace an employee deployed by the Provider at any time at its own discretion.
- (3) The Customer may only demand the replacement of a person deployed by the Provider for performing an Individual Agreement if this person has unequivocally violated essential contractual obligations of the Provider during the performance of the Individual Agreement, and it is not to be expected that the person concerned will henceforth comply with the obligations.

##### **4. Termination**

- (1) There may be no ordinary termination of Consulting Services prior to the complete fulfillment of the Agreement.
- (2) Any extraordinary notice of termination shall be given in writing. Text form is not sufficient.

##### **5. Delivery, Acceptance**

- (1) If the subject matter of the Individual Agreement is the creation of a defined deliverable by the Provider, it shall be delivered to the Customer according to the agreements specified herein.
- (2) The Provider shall notify the Customer of the provision of the deliverable to be accepted. Upon receiving the notification of the provision, the Customer shall immediately begin with the tests required for the acceptance.
- (3) If the acceptance tests reveal that the deliverable to be accepted deviates from the intended properties agreed in the Individual Agreement, the Customer shall record these deviations in writing and report them to the Provider.
- (4) The Customer may only refuse the required acceptance if a contractual use of the deliverable to be accepted is not possible or badly impaired and there is no patch, hotfix or reasonable workaround.
- (5) The Provider shall fix any errors hindering the acceptance and then provide the deliverable to be accepted again to the Customer. The above provisions shall apply to this acceptance as well.
- (6) If there are no errors hindering the acceptance, the Customer shall be obligated to declare the acceptance of the provided deliverable. In this declaration of acceptance, the Customer may explicitly reserve the right to have the undisputed errors reported by the Customer which are not obstructive to acceptance fixed. It shall also be considered a declaration of acceptance if the Provider provides the Customer with the deliverable to be accepted in accordance with the Agreement and the

Customer does not accept the deliverable within a defined reasonable period even though the Customer is obligated to do so.

## 6. Rights to Deliverables

- (1) Upon complete payment of the agreed remuneration for the Consulting Services provided, the Customer shall be granted the non-exclusive, permanent right to use the deliverables concerned according to the provisions.
- (2) The Customer shall be entitled to duplicate a computer program customized for them to the extent required for the use according to the provisions. Furthermore, the Customer shall be entitled to create the necessary backup files in accordance with the generally accepted rules of technology. Any other duplication requires the Provider's prior consent. The Customer shall be obligated to adopt any copyright notices of the original as they stand whenever it creates a duplication.
- (3) If the computer program customized by the Provider is an interface or a functional expansion of a Standard Software program, the Customer shall be entitled to use the computer program concerned to the same extent as the Standard Software program concerned.
- (4) The Customer shall neither be entitled to sell the deliverables nor to grant sublicenses for the deliverables to third parties nor to rent, let or lease them.
- (5) Until the complete payment of the agreed remuneration for the Consulting Services provided, the Customer only acquires a preliminary right to use the deliverables provided by the Provider according to the agreed terms, which may be revoked by the Provider. The Provider shall be entitled to exercise this right of revocation only if the Customer is in default of paying the agreed remuneration. Exercising the right of revocation does not imply a rescindment of the Individual Agreement concerned.
- (6) If third parties pursue enforcement proceedings against the Customer before the Customer has paid the agreed remuneration in full, the Customer shall be obligated to inform the third parties concerned and the marshal of the reservation of rights and the Provider's right of revocation existing during this period.

## 7. Remuneration

- (1) The Provider shall charge Consulting Services on a time basis according to the prices valid at the time of the conclusion of the Agreement. The Customer shall pay material costs and travel expenses separately at the rates specified in the Individual Agreement. Waiting times of the Provider's personnel for which the Customer is responsible shall be remunerated in the same way as working hours.
- (2) A daily rate specified by the Provider in the Individual Agreement or other documents defines the price for an employee deployed by the Provider for eight (8) working hours on a working day (Monday through Friday except for holidays in the Federal Republic of Germany) between 9:00 a.m. and 5:00 p.m. (hereinafter "regular working hours"). If the Provider performs additional work on a working day or work outside the regular working hours due to a customer request or an arrangement in the Individual Agreement, this work performed by an employee deployed by the Provider during this time is subject to the following surcharges that are charged in addition to the applicable daily rate:
  - a. For more than 8 hours of work on a working day or work outside the regular working hours, the additional work and the working hours outside the regular working hours shall be subject to a surcharge of 50% on the applicable daily rate;

- b. Work on Saturdays (except for the national holidays in the Federal Republic of Germany) shall also be subject to a surcharge of 50% on the relevant daily rate;
  - c. Work on Sundays and holidays shall be subject to a surcharge of 100% on the relevant daily rate.
- (3) The Customer is charged for Consulting Services after the service has been provided. For long-term projects, the service shall be billed at the end of each service month.

## 8. Estimated Workloads

Workloads estimated by the Provider are unbinding planned values the Provider has determined on the basis of the information and requirements of the Customer known at the time the workload was estimated and on the basis of the experience gained from comparable tasks.

## 9. Defects of Deliverables

- (1) If the subject matter of the Consulting Services to be provided by the Provider is a deliverable to be created for the Customer, this deliverable shall be considered free of any defects if it has the agreed target properties. The target properties agreed by the Parties result from the Individual Agreement concerned and the regulations of these Terms. If a deliverable deviates from the agreed target properties, the Customer shall be entitled to claim supplementary performance from the Provider. The Customer's right to supplementary performance does not apply to deviations from the agreed target properties that are due to an incorrect or incomplete information of the Customer, a use contrary to the Agreement, unauthorized changes of the deliverables effected by the Customer or a third party commissioned by the Customer or any other circumstances that are not at the responsibility of the Provider (like malfunctions of upstream or downstream IT systems by third-party providers).
- (2) The Customer shall reprehend any defects of the deliverables created by the Provider immediately after they become known to the Customer. With this reprehension, the Customer shall describe the defect and the accompanying circumstances under which the defect occurred in a manner that is required for the analysis and localization of the defect. Upon the Provider's request, the Customer shall provide the Provider immediately with any additional information that the Provider may require to analyze and locate the defect after receiving notice of the defect.
- (3) If the supplementary performance is objectively impossible or the Provider definitely refuses to deliver the supplementary performance or the Provider fails to deliver the supplementary performance for reasons owed to the Provider, the rights of the Customer due to a defect of the deliverable created by the Provider are based on the statutory provisions. If they oblige the Provider to pay compensation for damages or expenses, the liability limitations of these Terms shall apply.
- (4) In the event that the Provider inspects and/or remedies a defect not owed to the Provider, the Provider may demand a compensation from the Customer on the basis of the Provider's prices then applicable, unless the Customer could not with all due care recognize that the reprehended defect was in fact not a defect at the time the defect was reprehended.
- (5) The Customer's rights due to possible title defects of the Consulting Services provided by the Provider and the Customer's rights to the deliverables created for the Customer shall be determined conclusively in accordance with the provisions on Intellectual Property Right infringements.

- (6) Claims of the Customer due to a defect in a deliverable created by the Provider in the course of the provision of Consulting Services shall become statute-barred within one (1) year after delivery. If, according to the Individual Agreement, the Parties have agreed on the acceptance of the deliverable by the Customer or the deliverable has to be accepted by the Customer due to statutory regulations, the statute of limitations shall begin with the acceptance notwithstanding the above sentence 1.
- (7) Contrary to the above section, the Customer's claims for defects in deliverables that the Provider provides to the Customer in connection with the provision of Consulting

Services shall become statute-barred within the regular statutory limitation period if the Provider has fraudulently concealed a defect or provided a warranty for the missing quality. The regular statutory limitation period shall also apply if a defect in the deliverable created by the Provider results in damage that the Provider has caused intentionally or through gross negligence or that has injured the life, body or health of a person. Any further claims of the Customer due to defects of deliverables in accordance with the German Product Liability Act (ProdHaftG) shall also remain unaffected by the statute of limitations agreed herein.