

# GENERAL TERMS AND CONDITIONS

of HiSolutions AG

Version of May 1<sup>st</sup> 2023

## 1. Scope of Application

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all present and future business relations between HiSolutions AG, Schloßstr. 1, 12163 Berlin (hereinafter referred to as "HiSolutions") and the customer. Deviating, conflicting or supplementary General Terms and Conditions of the customer shall only become part of the contract if and insofar as HiSolutions has expressly agreed to their validity in writing in the respective order.

1.2 The agreements contained in the respective written order or other individual agreements made in writing with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC.

## 2. Placement of Orders

HiSolutions shall send the customer an offer to which HiSolutions is bound for four (4) weeks from the date of the offer. A binding order is concluded, if the customer returns the signed offer to HiSolutions within this period or declares his acceptance to HiSolutions (hereinafter referred to as the "Order" or the "Orders"). HiSolutions reserves all rights to all offer documents, as far as they are not granted to the customer by explicit agreement between the parties.

## 3. Order Processing

3.1 The project management for the services to be rendered by HiSolutions is the responsibility of HiSolutions. The selection of the employees to be deployed by HiSolutions is the responsibility of HiSolutions within the framework of the agreed qualification requirements. The customer shall be entitled to reject an employee selected by HiSolutions, if there are important personal reasons for not deploying him. In this case, HiSolutions is obliged to name another employee. HiSolutions shall be entitled to exchange its employees used for the provision of its services during the term of the respective Order, if this is necessary for operational reasons.

3.2 The customer shall provide HiSolutions in due time with the information, documents and accesses which are necessary for HiSolutions to perform the agreed services. If the performance of the agreed services by HiSolutions is delayed for reasons for which the customer is responsible (e.g. the customer cancels or does not adhere to agreed deadlines) and if HiSolutions incurs additional expenses or futile expenditures (hereinafter together referred to as the "Additional Expenses"), the customer shall reimburse HiSolutions for these Additional Expenses at the daily rates calculated in the project.

3.3 HiSolutions is entitled to mention the project title of the commissioned project in publications and towards individual third parties, as well as to refer to the placing of the Order by the customer. Further publications, which go beyond the naming of the customer's name, the fact of the placing of the Order and the project title, have to be approved by the customer before publication or transfer to third parties.



HiSolutions AG  
Schloßstraße 1  
12163 Berlin

info@hisolutions.com  
www.hisolutions.com

+49 30 533 289-0  
+49 30 533 289-900

#### 4. Clarification of Inconsistencies

In the event of differences of opinion between HiSolutions and the customer regarding the meaning or execution of provisions within the scope of the execution of the Order, which concern the services of HiSolutions or the cooperation of the customer, both parties shall appoint a member of the management or an authorized representative of the management to reach an agreement with the representative of the other party.

#### 5. Confidentiality

5.1 "Confidential Information" within the meaning of this Order shall mean written and oral information concerning the business affairs of the other party, which one party (the "Disclosing Party") makes available to the other party (the "Receiving Party") or which the Receiving Party becomes aware of in the course of the performance of the Order, to the extent that such information is designated by the parties as confidential or is obviously confidential in nature. This includes in particular trade and business secrets of the parties as well as information about the business affairs of third parties (such as information about products, interfaces and concepts of third party manufacturers, which HiSolutions uses in the performance of services). Information shall not be considered Confidential Information if the Receiving Party can prove

- that the Receiving Party was already aware of it before the conclusion of the contract,
- that it was already obvious before the conclusion of the contract or became obvious after the conclusion of the contract without breach of a confidentiality obligation or copyright by the Receiving Party,
- that the Receiving Party has received such information from a third party after the conclusion of the contract, provided that this third party has not breached any confidentiality obligation or copyright by passing on the information.

5.2 The Parties undertake to use the Confidential Information solely for the performance of the Order and for the purposes agreed or assumed in the Order and to reproduce it only if and to the extent strictly necessary for these purposes and not to disclose or share it with third parties without the written consent of the Disclosing Party. Third parties in the above sense are all natural and legal persons with the exception of the following:

- employees, subcontractors and companies affiliated with the Receiving Party within the meaning of Section 15 of the German Stock Corporation Act ("Aktiengesetz", "AktG") who need to know the Confidential Information in order to perform the respective Order and/or to achieve the purposes agreed upon or assumed in the Order, provided that it has obliged the Receiving Party to maintain confidentiality within the scope of this clause 5, and
- the external consultants of the Receiving Party who are bound by professional secrecy, such as lawyers, accountants and auditors. Disclosure to a third party is also permitted insofar as the Receiving Party is obliged to do so due to mandatory legal provisions, legally binding court decisions or legally binding administrative acts. The Receiving Party shall inform the Disclosing Party immediately.

5.3 The Receiving Party shall take at least the same care with regard to the secrecy of the Confidential Information and shall take the same protective measures as it would take to protect its own Confidential Information of the same kind and at least the care customary in trade. In particular, it shall take all reasonable measures to protect the Confidential Information against unauthorized disclosure, duplication and usage.

5.4 The obligation to keep Confidential Information secret as well as the restrictions on use under this clause 5 shall apply as long as its confidential character is given in accordance with clause 5.1. The expiration of the confidentiality and use restrictions shall not affect further rights of the parties, in particular patent, trademark and copyright rights.

5.5 As far as HiSolutions processes personal data of the customer within the scope of the services owed, the parties commit themselves to comply with the relevant data protection regulations.

## **6. Liability of the Parties**

The parties' claims for damages and compensation for futile expenditure (hereinafter together referred to as "Damages") shall be governed by the following provisions, irrespective of the legal nature of the respective claim (e.g. contractual claims, claims in tort, claims due to defects, delay, impossibility, other improper performance, landlord liability, etc.).

6.1 In the event of an assumed guarantee, the parties shall be liable to the extent of the respective guarantee; this shall remain unaffected by the following provisions.

6.2 The parties shall be liable to each other for culpable, i.e. intentionally and negligently caused Damages in accordance with the statutory regulations, unless their liability is limited or excluded below. The following exclusions and limitations of liability do not apply to the legal liability of the parties under the German Product Liability Act, to their liability for Damages resulting from culpable injury to life, body or health and to Damages for which one of the parties is liable on the basis of other mandatory legal regulations.

6.3 In the event of a culpable breach of non-essential obligations of the parties, insofar as this breach is not due to gross negligence or intent, the liability of the parties is excluded.

6.4 The liability of the parties is limited to the Damages foreseeable at the time of placing the Order, which typically occur in this type of business

- in case of culpable violation of essential obligations of the parties, as far as this violation is not grossly negligent or intentional, and
- in case of grossly negligent violation of non-essential obligations by vicarious agents of the parties, who are not legal representatives or executive employees of the parties.

6.5 Essential breaches of duty within the meaning of this clause 6 are those which endanger the achievement of the purpose of the contract, in particular the culpable breach of cardinal duties, i.e. essential contractual duties of a party, the fulfilment of which is essential for the proper execution of the contract and on the fulfilment of which the other party regularly relies and may rely.

## **7. Acceptance, Inspection and Notification of Defects**

7.1 The customer will confirm the delivery of the work results in writing, and if the work results are an acceptable work performance or if acceptance has been agreed, customer shall declare acceptance of the work results in writing after successful acceptance inspection. Unless otherwise agreed, the inspection period shall be three (3) weeks from delivery of the work results. HiSolutions shall be available within the inspection period for queries to a reasonable extent in accordance with the Order. The work result shall be deemed accepted if the customer does not accept the work result in writing within three (3) working days after expiry of the inspection period, declares in writing that he refuses acceptance due to material defects of the work result or that he is not obliged to accept the work result for other reasons. In this context, the customer shall specify the claimed defects individually and appropriately. Acceptance cannot be refused due to insignificant defects; insignificant defects will be removed by HiSolutions within the scope of subsequent performance.

7.2 The customer shall also inspect work results not to be accepted and other services rendered by HiSolutions within three (3) weeks after they have been handed over to the customer and shall notify HiSolutions in writing of any defects recognizable during such inspection at the latest three (3) working days after the expiration of the inspection period. If the customer fails to make this notification, the work result or other service shall be deemed to have been approved in accordance with the contract with regard to these recognisable defects. If the customer discovers further defects of the work results or other services later, i.e. after acceptance or expiration of the inspection period, the customer shall notify HiSolutions in writing without delay, but no later than three (3) working days after their discovery. If the customer fails to do so, the work results or other services relating to these defects shall be deemed to have been approved in accordance with the contract. It is sufficient to send the notification in due time. This paragraph is not applicable if HiSolutions has maliciously concealed a defect.

## **8. Claims of the Customer due to Defective Performance**

8.1 Insofar as the agreed work results are work or purchase services, HiSolutions shall ensure that the work results

- comply with the performance description of the Order (in particular that they correspond to the task in the form it may have found according to the agreed performance modifications),
- are not afflicted with defects that cancel or substantially reduce their suitability for the use presupposed in the respective Order and otherwise customary, as far as the condition is not expressly agreed upon, and have a quality which is usual for work results of the same kind and which can be expected by the customer according to the type of performance, and
- are free of defects as defined by § 435 German Civil Code (“Bürgerliches Gesetzbuch”, “BGB”) or § 633 para. 3 BGB.
- In all other respects HiSolutions renders the services owed according to the agreements with the customer and with the care of a diligent businessman.

8.2 In case of defective performance, HiSolutions shall initially be entitled to supplementary performance within a reasonable period of time set by the customer, at its option either by rectification of the performance or by renewed performance (e.g. production of a new work). If two attempts of supplementary performance within a reasonable period of time fail or if HiSolutions refuses the supplementary performance within a reasonable period of time, the customer may assert the other legal claims for defects (in particular also at the customer's option either reduction of the remuneration or withdrawal from the contract) or the other legal claims due to defective performance.

8.3 As far as HiSolutions is liable for Damages of the customer according to section 6 or has maliciously concealed a defect, these claims for Damages and claims for defects shall become time-barred according to the legal statute of limitations. All other claims for defects and other claims due to other defective performance shall become time-barred within one year from the start of the statutory limitation period.

## **9. Rights of Use**

9.1 HiSolutions grants the customer a non-exclusive, non-transferable and non-sub-licensable right to use the work results for the contractually agreed or presupposed purpose of use without any restrictions in time, space and content. All other rights and claims to the work results, to inventions made in connection with the work results of HiSolutions or created copyright protected works and services remain with HiSolutions. The rights to the trademarks depicted in connection with the work results are exclusively reserved by their right holders; HiSolutions does not grant the customer any rights of use.

9.2 Confidential Information within the meaning of Clause 5 shall remain the property of the Disclosing Party or the respective third party; the customer acquires rights of use of the Confidential Information of HiSolutions only as part of the work results according to the above clause 9.1 and only in compliance with the agreed secrecy obligations, which in this respect take precedence over clause 9.1.

## **10. Travel Expenses**

If the customer and HiSolutions have agreed upon a billing of travel expenses according to expenditure and there are no individual contractual stipulations regarding the billable expenses, the billing is carried out as follows:

- a) For journeys by car, a kilometre flat rate of 0,60 € net is charged.
- b) The costs of an official Bahncard for HiSolutions employees are generally covered by HiSolutions. If a Bahncard 100 or Deutschland-Ticket is used for train travel, the costs that would have been incurred for the trip if a Bahncard 50 had been used are claimed.
- c) If the overnight stay at the place of travel takes place in a company flat permanently rented by HiSolutions for this purpose, an overnight flat rate of 59 € net per night will be charged.

The invoice includes the costs actually incurred and verifiable by means of receipts, plus the lump sums permitted under tax law for additional catering expenses.

## 11. General Information

11.1 These GTC and all Orders are subject exclusively to the law of the Federal Republic of Germany. The exclusive place of jurisdiction for all disputes arising in connection with these GTC and the Orders, including those relating to their effective conclusion, subsequent amendments and termination, is Berlin.

11.2 Amendments to these GTC and the respective Order as well as its termination or the withdrawal from an Order must be in writing to be effective. This also applies to a possible waiver of this written form requirement. To comply with the written form requirement, it is sufficient to send the declarations signed by the respective party by fax to the fax number provided for this purpose by the other party.

11.3 If provisions of these GTC or the respective Order are invalid or unenforceable or contain regulatory gaps, the remaining provisions of these GTC and the respective Order shall remain valid and enforceable. The parties undertake to replace such an invalid provision by a valid provision which corresponds to what the parties would have agreed in good faith, taking into account the purpose of the contract, if they had been aware of the invalidity of this provision when the Order was placed. This applies accordingly in the case of unenforceable provisions and regulatory gaps.