

General Terms and Conditions for the Purchase of Services and Performance of SMF GmbH (as of 06.07.2023)

§ 1 General Terms and Conditions

(1) These General Terms and Conditions shall regulate the general conditions for the purchase of services and work performance by SMF GmbH, hereinafter referred to as the **Service Provider**.

(2) The concrete conditions of the respective order, such as the term and remuneration, shall be agreed upon by means of an offer submitted by the Service Provider or an order placed by the party contracting the services, hereinafter referred to as the **Customer**.

§ 2 Service Provision

(1) The Service Provider shall perform the services on its own authority, completely and in accordance with the order, in compliance with the fundamental principles of proper professional practice, applying the respective state-of-the-art technology. The Service Provider warrants that it possesses the know-how required for the performance of the service. This shall also apply to the Service Provider's own employees and commissioned third parties.

(2) All investments necessary to perform the order (hardware, software, employees, etc.) shall be made by the Service Provider itself on its own behalf and thus the Service Provider shall in principle utilize its own work equipment and personnel for the realization of the order.

§ 3 Remuneration

(1) The Service Provider shall receive remuneration for services rendered, as agreed upon within the scope of the respective offer or the respective order.

(2) The Service Provider shall only be entitled to invoice for the services actually rendered in accordance with the respective offer or the respective order, whereby the scope of services specified in the order shall always represent the maximum scope. Furthermore, the Service Provider shall not be entitled to full performance of this specified maximum scope; the Customer shall not owe the Service Provider any acceptance guarantee in this context.

(3) The Service Provider shall diligently log the time spent in rendered services, keep corresponding records and shall provide the Customer with a time-sheet for review and approval on a monthly basis or upon completion of said services. The Service Provider shall invoice the Customer for the time spent on the basis of the approved time sheets no later than the 3rd working day of the consecutive month. The billing rate (hourly or daily basis) shall be agreed upon in the respective order or offer. Should a fixed price have been agreed upon, the necessity of a released time sheet shall be omitted.

(4) The invoice shall be paid within the payment period agreed in the order, after presentation of a proper invoice, in non-cash form to an account to be named by the Service Provider. Upon payment, all claims of the Service Provider against the Customer arising from the respective order shall be deemed satisfied.

(5) Claims by the Service Provider may only be asserted against the Customer within 6 months after the end of the respective activity. Any such claims must be made in written form.

(6) The Customer shall be entitled to rescind any order. However, this shall not affect the Service Provider's entitlement to payment of the remuneration for services already rendered within the scope of the order.

(7) The remuneration shall be subject to value added tax, as required by law.

§ 4 Delivery, Acceptance and Remuneration

(1) Exclusively in the event that the Service Provider renders services pursuant to §§ 631 et seq. of the German Civil Code (BGB), the Service Provider shall notify the Customer, without undue delay, of the completion of agreed partial services ("milestones") and of the overall service in each case.

(2) The Customer or its customer, shall inspect the services without undue delay. Said service shall be deemed to have been accepted if the Customer does not notify the Service Provider in written form of any and all deficiencies identified within a period of 30 days after notification of completion. In this case, the Customer shall set the Service Provider a grace period to remedy said deficiencies. Should said period of grace expire without effect, the Customer shall be entitled to refuse rectification by the Service Provider and to arrange for substitute performance at the Service Provider's expense.

(3) Payment shall duly be made after acceptance of the service or partial service. Partial payments may be agreed upon.

(4) Unless otherwise agreed upon in the order or the offer, the applicable statutory regulations shall apply to any warranty claims of the Customer against the Service Provider.

§ 5 Confidentiality

(1) The Service Provider shall maintain any and all information, in connection with these GTC, in strict confidentiality and shall not disclose any business matters nor any information and documents which are made available to the Service Provider or otherwise become known to the Service Provider in the course of the cooperation with the Customer, both during the term and after termination of the order, this shall also include but not be limited to any and all information and documents of the Customer's customer.

§ 6 Documentation

(1) After completion of a respective order, the Service Provider undertakes to hand over to the Customer all business documents, such as information material, books, documents on customers of the Customer as well as other business materials, in particular software and data carriers in the possession of the Service Provider, including the codes (object and source codes).

(2) The Service Provider shall further be obliged to delete all data related to its activities for the Customer from data carriers not to be handed over to the Customer and to confirm to the Customer the complete surrender of all materials and the deletion of all data.

§ 7 Exclusivity

(1) The Service Provider undertakes, during the term of the respective order as well as for a period of one year after the completion of said order, neither to entice away the Customer's customer named in the order or the offer, nor to support third parties in doing so.

(2) The Service Provider further undertakes not to act, on its own behalf or on the behalf of third parties, in the area of activity of the Customer, for the Customer's customer as named in the order or the offer, or for companies affiliated with the Customer during the term of the respective order and for a period of one year after completion of said order.

(3) The Service Provider undertakes to pay a contractual penalty of twenty-five thousand Euros (EUR 25,000.00) to the Customer for each case of infringement of the provisions of the above paragraphs 1 and 2, waiving any right to plea of appeal. Further Customer claims shall remain unaffected by this.

§ 8 Intellectual property rights

(1) All rights to the work results achieved by the Service Provider, within the scope of the respective order, shall exclusively belong to the Customer. The codes (object and source codes) and the associated documents shall become the property of the Customer upon their creation, namely in their respective processing state. The Service Provider shall keep the documents for the Customer until they are handed over.

(2) Insofar as the results of the Service Provider's performance, pursuant to the aforesaid Paragraph 1, consist of a result capable of being copyrighted (in particular software), the Service Provider shall grant the Customer an exclusive and unrestricted right of use thereto for all types of use, whether known or as yet unknown, now or in the future. This shall also include, but not be limited to, the right to edit, modify, reproduce, publish and exploit the work. Furthermore, the Customer shall be authorized, without separate consent in each individual case, to transfer these rights, in whole or in part, to third parties or to grant third parties rights of use.

(3) If a result which has arisen from the Service Provider's activity for the Customer is the subject or part of an invention, the Service Provider shall transfer all rights to and from the invention or the part of the invention to the Customer.

(4) All claims of the Service Provider for the granting of the rights pursuant to the above paragraphs 1 to 3 shall be settled by the fee obtained by the Service Provider.

§ 9 Data protection

(1) The Service Provider and the Customer undertake to maintain data secrecy in accordance with the German Data Protection Regulation (German Data Protection Regulation) and the German Federal Data Protection Act (BDSG). They are aware that it is prohibited to process, disclose, make accessible or otherwise use protected personal data without authorization for a purpose other than that which is part of the respective lawful performance of the task.

(2) The Customer's privacy policy shall be disclosed to the Service Provider in a separate document.

(3) The Service Provider and the Customer shall also bind all of their employees to data secrecy in writing.

§ 10 Compliance with the Minimum Wage Act (MiLoG)

(1) The Service Provider assures the Customer that it will comply with the provisions of the German Minimum Wage Act (MiLoG) for the employees it deploys as workers.

(2) Insofar as the Customer is held liable due to the Service Provider's violation of the provisions of the MiLoG of its employees, the Service Provider shall indemnify the Customer against the financial damage arising therefrom.

§ 11 Anti-corruption Clause

(1) Both, the Service Provider as well as the Customer, hereby undertake that at the date of the entering into force of the agreement, itself, its directors, officers or employees have not and will not

- i. Offer, promise, give, authorize, solicit or accept any undue pecuniary offer or accept any form of bribery or other means to obtain an illegal or undue advantage or other advantage of any kind (or implied that they will or might do any such thing at any time in the future);
- ii. Influence business decisions by accepting or offering favors, benefits, gifts or other gestures of hospitality that are either improper or not in accordance with standard business practices;
- iii. Engage in corruption, extortion or any type of fraud.

(2) Furthermore, both Customer and Service Provider shall be prohibited from accepting an order if they have the knowledge that such services pursuant to the aforesaid Paragraph 1 have been provided or are to be provided to a person who is in an employment relationship with the Customer or Service Provider, unless the Customer or Service Provider have been informed in written form of such arrangement prior to the order being placed.

§ 12 Recognition of Human Rights and Guarantee of Appropriate Working Conditions

(1) The Customer and the Service Provider shall recognize the Universal Declaration of the United Nations and ensure that they are not involved in human rights violations.

(2) The Customer and the Service Provider shall neither tolerate child labor, forced labor nor other involuntary labor in accordance with the International Labor Organization (ILO) Conventions C138 and C182. They shall ensure occupational health and safety for themselves and their employees in compliance with applicable laws and regulations. At a minimum, employees must be provided with free access to drinking water and sanitary facilities. In addition, suitable fire protection, lighting and ventilation must be provided.

(3) Each employee shall be treated with respect and dignity. Based on the principle of equal opportunity and the General Equal Treatment Act (AGG), no employee shall be discriminated against or physically, psychologically, sexually or verbally harassed or abused with regard to gender, race, religion, age, family circumstances, origin, skin color, sexual orientation or disability.

(4) Working hours shall be in accordance with applicable laws. Employees shall be provided with employment contracts that specify working hours and compensation. All remuneration shall be paid without delay and in accordance with the applicable laws.

(5) The Customer and the Service Provider shall respect the right of their employees to freedom of association and collective bargaining within the framework of the respective applicable laws and the conventions of the ILO.

§ 13 Minimization of Environmental Impact

(1) The Customer and the Service Provider acknowledge the environmental impact resulting from their business activities. They shall therefore ensure a responsible approach to the environment and work continuously to reduce their environmental impact. Continuous efficiency improvement in the use of resources is an important part of operational management. Waste of any kind as well as all emissions to air, water or soil arising therefrom shall be minimized.

§ 14 General Conditions

(1) The Customer shall have the right to unilaterally amend these GTC. In such a case, the Customer shall notify the Service Provider of such amendments and grant it a six-week right to objection. If the Service Provider does not object within said period, the new amended GTC shall be made applicable with force and effect.

(2) Any and all amendments to the GTC and the order must be made in written form; this shall also apply to the cancellation of said written form clause.

(3) The applicability of any general terms and conditions of the Service Provider shall be excluded in principle, but may be agreed upon individually within the scope of the respective offer or the respective order.

(4) Agreements contained within an order shall take precedence over the provisions of the GTC.

(5) These GTC, as well as the offers or orders related thereto, shall be governed exclusively by the laws of the Federal Republic of Germany, expressly excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict-of-law rules of private international law.

(6) As far as permissible, the place of jurisdiction shall be Dortmund.