

## General Terms and Conditions of Hamburg Innovation GmbH

### 1. Scope of application

- 1.1 The following terms and conditions shall apply to all deliveries and services, unless otherwise agreed in writing. Deviating agreements shall only apply to a specific contract and not to future contracts, unless expressly agreed otherwise in writing.
- 1.2 The General Terms and Conditions shall only apply to merchants if the contract is part of the operation of a commercial business and to legal entities under public law and special funds under public law in accordance with Section 310 I sentence 1 BGB.
- 1.3 These General Terms and Conditions of Hamburg Innovation GmbH (hereinafter referred to as HI) shall apply exclusively. Terms and conditions of the contractual partner shall not apply, even if HI does not expressly object to them. The same shall also apply if HI performs the service owed in the knowledge of conflicting general terms and conditions of the contractual partner.
- 1.4 In addition to HI's General Terms and Conditions, the provisions of Special Section I shall apply to the organisation of events.

### 2. Offers, conclusion of contract and scope of services

- 2.1 The services and/or work shall be provided in accordance with the applicable statutory provisions, unless otherwise stipulated in these General Terms and Conditions.
- 2.2 HI shall be entitled to utilise the services of third parties for the execution of orders.
- 2.3 HI's order confirmation is exclusively authoritative for the scope of the contractually owed service. Changes to the agreed scope of services must be specified in writing.
- 2.4 HI is authorised to make partial deliveries and render partial services at any time, insofar as this is reasonable for the contractual partner.
- 2.5 Dates, deadlines, dimensions, weights, simulation results, drawings, etc. are non-binding unless they have been expressly confirmed in writing.
- 2.6 HI reserves the right to make changes to the design, the choice of materials, the specification and the type of construction even after sending an order confirmation, provided that these changes are reasonable for the contractual partner within the framework of the fulfilment of the contract.

- 2.7 Assurances and guarantees for the quality of deliveries and services are only granted if expressly agreed in writing.

### 3. Obligations of the contractual partner to co-operate

- 3.1 The contractor shall ensure that all necessary documents and data are submitted to HI free of charge and in good time, that all information is communicated to HI and that HI is informed of all processes and circumstances relating to the project. This also applies to documents, processes and circumstances which only become known during HI's activities. At the request of the contractual partner, HI shall name a contact person for the receipt of the documents, data and information listed in sentence 1.
- 3.2 The contractual partner must also ensure that the appropriate infrastructure, which is essential for the realisation of the projects, is provided. This includes free access to all premises, installations (hardware, software, networks, etc.) insofar as this is necessary for the proper provision of the services.

### 4. Delivery periods / transfer of risk

- 4.1 Delivery or performance deadlines shall only be binding if they have been agreed in writing. They shall be extended appropriately if the contractual partner delays or fails to co-operate as required or agreed. Changes to the works/products or services to be delivered initiated by the contractual partner shall also lead to a reasonable extension of the delivery period.
- 4.2 The same shall apply in the event of labour disputes, in particular strikes and lockouts, as well as in the event of unforeseen obstacles beyond HI's control, e.g. delays in delivery by a sub-supplier, traffic and operational disruptions, material and energy shortages or other cases of force majeure (war, terrorist attacks, weather-related disasters).
- 4.3 The risk of accidental loss or accidental deterioration of the delivery shall pass to the contractual partner as follows
  - in the case of delivery, when the goods are handed over to a forwarding agent or carrier, at the latest when they leave the place of delivery, even if the delivery is made using the contractual partner's own vehicle. At the request and expense of the contractual partner, HI deliveries shall be insured against the usual transport risks;
  - in the case of delivery with installation and assembly on the day of handover to the contractual partner.
- 4.4 If the dispatch, the start, the execution of the installation or assembly or the handover is delayed for reasons for which the contractual partner is responsible or if the contractual partner is in default of acceptance for other reasons, the risk shall pass to the contractual partner from the day of notification of readiness for handover or dispatch.

## **5. Prices and terms of payment**

- 5.1 The services and work shall be invoiced at the price stated in the offer or on a time and material basis after completion or acceptance of the services, unless otherwise agreed in writing. Estimated prices stated in the offer for services and work on a time and material basis are non-binding. Costs for travelling shall be invoiced additionally unless they are expressly included in the fixed price.
- 5.2 The respective prices are quoted in euros and are exclusive of VAT and packaging, insurance, freight, assembly and other shipping and transport costs.
- 5.3 The statutory value added tax applicable at the time of performance shall be added to the agreed prices and shall be shown separately on the invoice.
- 5.4 Payments are to be made to the HI account specified in the invoice, stating the invoice number and the intended use, within 14 calendar days of receipt of the invoice without deduction. No discount shall be granted. If the order value for services provided by HI exceeds EUR 8,000, a down payment of 1/3 of the order value shall be due immediately, unless otherwise agreed in the service description.
- 5.5 As a matter of principle, HI is not obliged to consider the contractual partner's change requests. If HI nevertheless fulfils change requests, the resulting additional costs will be charged to the contractual partner
- 5.6 If the contractual partner is in default of payment, HI is entitled to charge interest on arrears at a rate of 8 percentage points above the current base rate of the European Central Bank. The contracting parties reserve the right to prove lower or higher interest damages.
- 5.7 If, after acceptance of the order, HI becomes aware of facts which give rise to justified doubts as to the solvency of the contractual partner, HI is entitled to demand full payment or corresponding security before delivery or to withdraw from the contract after unsuccessfully setting a deadline. In addition to a delay in payment that has already occurred, evidence of a significant deterioration in financial circumstances shall include, in particular, corresponding information from a bank, credit agency or a company that has a business relationship with the contractual partner. If the delivery has already been made, the invoice amounts shall be due for payment immediately regardless of the agreed terms of payment.

## **6. Offsetting and retention**

- 6.1 The contractual partner shall only be entitled to set-off insofar as the set-off claim is undisputed or has been recognised by declaratory judgement.
- 6.2 The contractual partner shall only be authorised to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship

## **7. Consultancy services**

- 7.1 Consultancy services shall be commissioned in accordance with the applicable remuneration rates or the conditions specified in the offer. If daily rates are agreed for consultancy services, no hourly rates shall be charged. If the working time is less than four hours, half the daily rate shall be charged for this day. The daily rates do not include travelling expenses/material costs. Travelling time is part of the working time. For consulting services lasting more than one year, HI reserves the right to adjust, i.e. moderately reduce or increase, the daily rates according to the general price development.
  - 7.2 If fixed consulting appointments are not cancelled at least 5 working days before the appointment for reasons for which HI is not responsible, HI reserves the right to charge 50% of the expected consulting fee, without prejudice to any other claims.
  - 7.3 Unless otherwise agreed in writing, the consultancy services shall be invoiced on a quarterly basis according to the work performed. If the order value exceeds € 8,000.00, a down payment of 1/3 of the order value shall be due immediately. All prices are subject to statutory VAT.  
  
HI assumes no liability towards the client with regard to advice on the acquisition of funding that the acquisition of funding based on the advice is successful.
- ## **8. Acceptance**
- 8.1 Work services are to be accepted by the client. The handover of the service and conformity with the agreed service description must be recorded by the contractual partner without delay. The contracting parties shall be responsible for any other proof of handover. Insignificant deviations shall not entitle the client to refuse acceptance.
  - 8.2 The commissioning or utilisation of the work or parts of the work shall be deemed to constitute acceptance.
  - 8.3 The service shall also regularly be deemed to have been accepted if the contractual partner does not declare acceptance after the expiry of two weeks from the handover and the contractual partner is, as it were, obliged to accept in accordance with Section 640 I BGB.
- ## **9. claims for defects**
- 9.1 The following shall apply to promised services that constitute a work and are provided outside of research services. The following provisions shall only apply to research services if a work was expressly promised as a research service.
  - 9.2 The work performance must correspond to the agreed service description and the agreed scope of services and must be provided to the client free of material defects and defects of title. HI guarantees that the work performance is free of third party rights.
  - 9.3 HI assumes no liability with regard to the actual realisation of the project or its economic usability, insofar as the work performed corresponds to the work owed.

- 9.4 The contractual partner must inspect the work/product immediately upon receipt, insofar as this is feasible in the ordinary course of business, and, if a defect is found, notify HI immediately in writing. If the contractual partner fails to do so, the work/product shall be deemed approved, unless the defect was not recognisable during the inspection. Otherwise, Sections 377 ff. HGB apply.
- 9.5 In the event of a defect, HI shall, at its discretion, either rectify the defect or make a new delivery (subsequent fulfilment). In the event that a subsequent delivery is to be made, HI shall be granted a reasonable period for subsequent delivery. If the subsequent fulfilment fails, the contractual partner has the right to demand either a reduction in payment or cancellation of the contract.
- 9.6 HI may refuse subsequent fulfilment if this requires an effort that is grossly disproportionate to the contractual partner's interest in performance. In this case, the contractual partner may demand a reduction of the remuneration or withdraw from the contract.
- 9.7 Claims for defects shall not exist in the event of only insignificant deviation from the agreed quality, only insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating materials or due to special external influences which are not provided for in the contract.
- 9.8 If modifications or repair work are carried out by the contractual partner or third parties, no claims for defects shall exist either.
- 9.9 Claims for material defects and defects of title shall become time-barred after 12 months. Excluded from this are claims based on Clause 12 of these GTC
- 10. Retention of title**
- 10.1 HI retains ownership of the delivered works/products until full payment has been made. The assertion of the retention of title does not require cancellation by HI.
- 10.2 The contractual partner is obliged to treat the delivered work/product with care and, at HI's request, to insure it adequately against damage for the duration of the retention of title.
- 10.3 **KHERW UDEW DOSDUW HUIVRW DW KRUIVHGWR**  
**DVVUWKHZRUNSURGEW DVVHFDUWRUSOHGHIHW**  
**EWVFWUW OHGW RUHWHUWKHUVHUGIRGMDWKH**  
**RUGIDUFERUZHRTVHUVW KHUHFDMVUWWR**  
**UOHVWU HODI PVUWUW VVUVEVHUV**  
**SDUW HUIVKHERW UDEW DOSDUW HUIVKDOOPDNWKH**  
**BEHVVDUGHFODUW URVUVRGW UPH**
- 10.4 **WKHAAWRUWHUHRURWKHUW HUHWRVU**  
**WKUUGSDUW HUIVKHERW UDEW DOSDUW HUIPVU URUPI**  
**UUPHGLUW HUIVUW UVRWKUW HADDVUWUW UWU**  
**UUKWUW UDEFUGDEHUVUWKBPUPDU**  
**RGHRIUDBUREFHGUHVRUUDUW KHUWKUUGSDUW**  
**UVRW UDSRVUWRWRUHPEDUVRUWKHMGUFDU**  
**DGEW UDMGUFDDERWUVRUDEW URSUVDUWR**  
**BUVKHERW UDEW DOSDUW HUIVKDOOEHUDEOHU**  
**WKHORVVUHUUGHEU**
- 10.5 **UWKHGHUHUHGZRUNSURGEWRIUWSUREHVVHGU**  
**UAPRGHUUHGURUPLHGZUWKRW KHUREMHEWUWU**  
**EHORUWUWRUDEFUWHVRRZHUVKUSTRWKH**  
**HZREMHEWUWKHUUW URRUWKHUUHRTWKH**  
**GHUHUHGREMHEWUWUWKHUVUUDUW HGREMHEWU**
- 11. Work results/ rights of use**
- 11.1 **UWKDOUHPDUWKHRZHUHTHUWU HRSUUKWU**  
**UHW UVDGRWKHUW HUUHFUW UDSURSHUW UUKWU**  
**ROGSURSHUW UUKWU**
- 11.2 Inventions made during the execution of an order by employees of HI and by third parties commissioned by HI belong to HI. In addition, HI shall only grant rights of use with regard to newly created protectable work results within projects with a separate contractual and written agreement.
- 11.3 Inventions made jointly by employees of HI and the client during the execution of an order, as well as industrial property rights granted for this purpose, are the joint property of both contractual partners.
- 11.4 **UDUNUWUGHW UUUWKADWKRUUPDRWEH**  
**UAPRAGHUVUURHGDGDUHFRIUWDEOH**  
**DUW HUHGRUWHG UDRWKHUZU**
- 12. Liability**
- 12.1 **UDUPVRIWKHERW UDEW DOSDUW HUIRUGDPDUH**  
**DUHFEDGAGHGHGURPW KUVDUHFODI PVUW**  
**GDPDUHVEWKHERW UDEW DOSDUW HUIUUVUWRP**  
**UWU RUUHUU PERUKADUW KRUIVRPW KHUHFDEKRU**  
**HVVW UDERW UDEW DOREUUDUW UVEUGEDU**  
**REUUDUW UVDVZHUUDUW UDEUW URUWKHUGDPDUH**  
**EDVHGRDUWUWRDORUVRUWUHUUHUW**  
**EUHDEKRUW UWUWUHUUUDUHUWUWUW UHVRU**  
**UUDUW UVDUWUWUWUW UDERW UDEW DU**  
**REUUDUW UVDUWUWUWUWUWUWUWUWUWUWU**  
**BEHVVDUWRDEKUHAW KHUSURVARTWKHERW UDEW**
- 12.2 Bei der Verletzung wesentlicher Vertragspflichten haftet die HI nur auf den vertragstypischen, vorhersehbaren Schaden, wenn dieser einfach fahrlässig verursacht wurde, es sei denn, es handelt sich um Schadensersatzansprüche des Vertragspartners aus einer Verletzung des Lebens, des Körpers oder der Gesundheit.
- 12.3 Die Einschränkungen der Abs 1 und 2 gelten auch zugunsten der gesetzlichen Vertreter und Erfüllungsgehilfen der HI, wenn Ansprüche direkt gegen diese geltend gemacht werden.
- 12.4 Die Vorschriften des Produkthaftungsgesetzes bleiben unberührt.
- 13. Geheimhaltung**
- 13.1 Die Vertragspartner sind verpflichtet, die vertraulichen Informationen, ohne die vorherige schriftliche Einwilligung der mitteilenden Partei nicht an Dritte weiterzugeben und nur für den Zweck der Vereinbarung zu verwenden. Die Informationen werden gleichfalls nicht für eigene Zwecke verwendet. Es werden sämtliche erforderlichen Vorkehrungen getroffen, damit Unbefugte keinen Zugang zu diesen Informationen haben können.
- 13.2 Als vertrauliche Information gelten jeweils diejenigen, die als solche ausdrücklich bezeichnet werden und solche, die naturgemäß als vertraulich gelten.

- 13.3 Informationen sind dann nicht als vertraulich einzustufen, wenn sie nachweislich:
- dem Vertragspartner vor dem Empfang bekannt waren,
  - der Öffentlichkeit allgemein bekannt sind,
  - der Öffentlichkeit nach dem Empfang zugänglich gemacht wurden, ohne dass der Vertragspartner dies zu vertreten hat, oder
  - dem Vertragspartner rechtmäßig von einem Dritten zugänglich gemacht worden sind
  - Im Falle eines Verstoßes gegen die Verpflichtungen aus diesem Vertrag trägt die verletzende Vertragspartei die Beweislast für das Vorliegen dieser Tatbestände.

13.4 Die Verpflichtungen aus dieser Bestimmung gelten für beide Vertragspartner auch nach Beendigung des Auftrags unbegrenzt fort.

13.5 Der Auftraggeber erkennt die Notwendigkeit von wissenschaftlichen Vorträgen und Publikationen durch die HI oder der von ihr beauftragten Dritten an. Sofern eine Einwilligung des Auftraggebers erforderlich ist, gilt diese als erteilt, sofern der Auftraggeber nicht innerhalb von zwei Monaten ab Kenntnisnahme schriftlich einer Veröffentlichung widerspricht.

13.6 Von der HI oder deren Unterauftragnehmern zur Verfügung gestellte Zeichnungen, Entwürfe oder andere Vorlagen, verbleiben im Eigentum der HI, soweit nichts anderes schriftlich vereinbart ist. Sie dürfen nicht für andere als den vereinbarten Zwecke verwendet, vervielfältigt oder Dritten zur Kenntnis gebracht werden und sind der HI nach Erfüllung des Vertrages oder bei Beendigung des Projektes oder auf Aufforderung durch die HI unverzüglich zurückzugeben.

#### **14. Datenschutz**

Die Vertragspartner werden personenbezogene Daten des jeweils anderen Vertragspartners nur für vertraglich vereinbarte Zwecke unter der Beachtung der gesetzlichen Bestimmungen verarbeiten oder nutzen.

#### **15. Kündigung**

15.1 Verträge können aus wichtigem Grund gekündigt werden.

15.2 Im Fall der Kündigung wird die HI das bis dahin erreichte Ergebnis übergeben. Der Auftraggeber ist verpflichtet, der HI die bis zum Zeitpunkt des Wirksamwerdens der Kündigung entstandenen Kosten einschließlich eines dem Stand der Arbeiten entsprechenden Gewinnes zu vergüten. Bei Festpreisen erfolgt eine Abrechnung nach dem Stand des Projektes im Verhältnis zu den gesamten Arbeiten. Zusätzlich besteht ein Anspruch der HI auf Vergütung der bis zum Zeitpunkt der Kündigung eingegangenen Verbindlichkeiten der HI.

15.3 Es gilt jeweils das Schriftformerfordernis.

#### **16. Schlussbestimmungen**

16.1 Die Übertragung von Rechten und Pflichten aus den Verträgen durch den Auftraggeber auf Dritte bedarf der vorherigen schriftlichen Zustimmung der HI.

16.2 Die Unwirksamkeit einzelner Bestimmungen oder seiner Bestandteile lässt die Wirksamkeit der übrigen Regelungen unberührt.

16.3 Die Einbeziehung und Auslegung dieser Allgemeinen Geschäftsbedingungen unterliegen ebenso wie Abschluss und Auslegung der Rechtsgeschäfte mit dem Vertragspartner ausschließlich dem Recht der Bundesrepublik Deutschland.

16.4 Für alle sich aus diesem Vertrag ergebenden Streitigkeiten ist ausschließlicher Gerichtsstand Hamburg.

*Stand: September 2013*