

## 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 The contractual partner is not authorised to assign the work/product as security or pledge it, but is entitled to resell the reserved goods in the ordinary course of business. It hereby assigns to HI any resulting claims against its business partners. The contractual partner shall make the necessary declarations in good time.
- 10.4 In the event of seizure or other interventions by third parties, the contractual partner must inform HI immediately in writing so that HI can assert its rights in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse HI for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the contractual partner shall be liable for the loss incurred by HI.
- 10.5 If the delivered work/product of HI is processed, remodelled or mixed with other objects not belonging to HI, HI acquires co-ownership of the new object in the ratio of the value of the delivered object to the newly created object.
- 11. Work results/rights of use**
- 11.1 HI shall remain the owner of existing copyrights, inventions and other intellectual property rights (old property rights).
- 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 Markings identifying the author may not be removed, destroyed, made unrecognisable, altered or used in any other way.
- 12. Liability**
- 12.1 Claims of the contractual partner for damages are excluded. Excluded from this are claims for damages by the contractual partner arising from injury to life, limb or health or from the breach of essential contractual obligations (cardinal obligations) as well as liability for other damages based on an intentional or grossly negligent breach of duty by HI, its legal representatives or vicarious agents. Essential contractual obligations are those whose fulfilment is necessary to achieve the purpose of the contract.
- 12.2 In the event of a breach of essential contractual obligations, HI shall only be liable for the foreseeable damage typical for the contract if this was caused by simple negligence, unless the contractual partner's claims for damages are based on injury to life, body or health.
- 12.3 The limitations of paragraphs 1 and 2 shall also apply in favour of HI's legal representatives and vicarious agents if claims are asserted directly against them.
- 12.4 The provisions of the Product Liability Act shall remain unaffected.
- 13. Confidentiality**
- 13.1 The contracting parties are obliged not to disclose the confidential information to third parties without the prior written consent of the disclosing party and to use it only for the purpose of the agreement. The information shall likewise not be used for their own purposes. All necessary precautions shall be taken to prevent unauthorised persons from gaining access to this information.
- 13.2 Confidential information is deemed to be information that is expressly designated as such and information that is deemed to be confidential by nature.

- 13.3 Information shall not be classified as confidential if it can be proven that it
- was known to the contractual partner prior to receipt,
  - is generally known to the public,
  - was made accessible to the public after receipt without the contractual partner being responsible for this, or
  - was lawfully made available to the contractual partner by a third party
  - In the event of a breach of the obligations arising from this contract, the infringing contracting party shall bear the burden of proof for the existence of these facts.

- 13.4 The obligations arising from this provision shall continue to apply to both contracting parties indefinitely, even after termination of the contract.
- 13.5 The client recognises the necessity of scientific presentations and publications by HI or third parties commissioned by HI. If the client's consent is required, this shall be deemed granted unless the client objects to publication in writing within two months of becoming aware of it.

- 13.6 Drawings, drafts or other templates provided by HI or its subcontractors remain the property of HI, unless otherwise agreed in writing. They may not be used for purposes other than those agreed, reproduced or brought to the attention of third parties and must be returned to HI immediately after fulfilment of the contract or upon completion of the project or at HI's request.

#### **14. Data protection**

The contracting parties shall only process or utilise personal data of the other contracting party for contractually agreed purposes in compliance with the statutory provisions.

#### **15. Cancellation**

- 15.1 Contracts may be terminated for good cause.
- 15.2 In the event of termination, HI shall hand over the result achieved up to that point. The client is obliged to reimburse HI for the costs incurred up to the time the cancellation takes effect, including a profit corresponding to the status of the work. In the case of fixed prices, invoicing shall be based on the status of the project in relation to the total work. In addition, HI shall be entitled to compensation for the liabilities incurred by HI up to the time of cancellation.

- 15.3 The written form requirement applies in each case.

#### **16. Final provisions**

- 16.1 The transfer of rights and obligations from the contracts by the client to third parties requires the prior written consent of HI.
- 16.2 The invalidity of individual provisions or parts thereof shall not affect the validity of the remaining provisions.

- 16.3 The inclusion and interpretation of these General Terms and Conditions, as well as the conclusion and interpretation of legal transactions with the contractual partner, are subject exclusively to the law of the Federal Republic of Germany.

- 16.4 The exclusive place of jurisdiction for all disputes arising from this contract is Hamburg

*Version dated: September 2013*