

General Terms and Conditions for the Provision of Services of OFF LIMITS IT Services GmbH

Preamble

The following General Terms and Conditions apply for all services of OFF LIMITS IT Services GmbH (hereinafter "OFF LIMITS"). They also apply, insofar as the client is businessperson as defined by the German Commercial Code (*Handelsgesetzbuch – HGB*), for all future business relations even if they have not been expressly agreed again. The type and scope of the services owed in each case are agreed in separate contracts.

Deviations from these General Terms and Conditions are only valid if OFF LIMITS has confirmed such in writing.

The employees of OFF LIMITS are not authorized to enter into any oral collateral agreements or provide any verbal guarantees which go beyond the content of the individual contract including these General Terms and Conditions.

Any changes to these General Terms and Conditions will be communicated to the client in writing by fax or email. If the client does not object to such changes within four weeks of notification, the changes are deemed to have been accepted by the client. In the event of any change to these General Terms and Conditions the client will be advised separately of the right to object and the legal consequences of remaining silent.

1 Subject matter of the agreement

OFF LIMITS provides all services only on the basis of the provisions of this agreement and the relevant individual contract entered into with respect to the relevant performance.

2 Working days/man-days

2.1 Unless specified otherwise in an individual contract, the daily rates which apply for the term of the relevant contracts are based on a standard working day of eight hours.

2.2 For services for which an eight-hour working day is exceeded, each additional hour required will be billed at an hourly rate equivalent to one-eighth of the daily rate. Services which are provided before 8.00 a.m. or after 8.00 p.m., at weekends or on public holidays (decisive for this is the location of OFF LIMITS), will be billed in accordance with the then applicable services conditions which have been provided to the client. Unless agreed otherwise, (hereinafter referred to as the "Submission Date"), OFF LIMITS submits a list of the hours worked to the client at the end of each calendar month. If the client does not notify OFF LIMITS of any objection to the list of hours worked within five days after the Submission Date, the specified number of hours worked is deemed to have been accepted by the client.

3 Billing and payment

Unless specified otherwise in any individual contract, the costs for services provided will be billed by OFF LIMITS monthly in arrears. All amounts billed are payable with 14 days of invoice receipt. In the event of late payment, OFF LIMITS reserves the right to claim interest of 8 per cent above the applicable base interest rate p.a. The assertion of further claims for damages remains unaffected.

4 Expenses

With respect to all on-site services provided, the client reimburses OFF LIMITS the out-of-pocket expenses and disbursements actually incurred in accordance with the conditions set forth in the relevant individual contract. Expenses for travelling to the client by car are, unless agreed otherwise, billed to the client at a flat rate of EUR 0.51 per kilometer plus VAT at the statutory rate. These expenses will be stated as a separate item in the invoice issued to the client. OFF LIMITS will at the written request of the client provide the client with a copy of the supporting documents for the expenses.

5 Liability

5.1 OFF LIMITS has unlimited liability in accordance with the relevant statutory provisions for injury to life, body or health which is based on any negligent or intentional breach of duty on the part of OFF LIMITS, its legal representatives or agents, as well as for damage covered by liability in accordance with the German Product Liability Act (*Produkthaftungsgesetz – ProdHG*). OFF LIMITS is liable in accordance with the relevant statutory provisions for damage not covered by sentence 1 and which is based on intentional or grossly negligent breach of contract or deceit on the part of OFF LIMITS, its legal representatives or agents. OFF LIMITS is only then liable for damage based on the lack of any guaranteed quality, but which does not directly affect the work, if the risk of such damage is clearly covered by the quality guarantee.

5.2 OFF LIMITS is also liable for damage caused by simple negligence if the resulting damage is based on the infringement of rights which are specifically to be granted to the client in accordance with the content and purpose of the relevant contract and/or if the resulting damage is based on the breach of duties, the fulfillment of which makes the performance of the contract possible at all in the first place and on compliance with which the contractual partner may normally rely (material contractual obligations).

5.3 Any further liability is excluded without any consideration of the legal nature of the claim which is being asserted. No liability is in particular assumed for the occurrence of any specific result.

5.4 OFF LIMITS is likewise only liable to the extent clearly stated above for the loss of data and programs and their recovery and only to the extent that the loss could not have been prevented by appropriate precautionary measures on the part of the client, in particular the daily creation of back-up copies of all data and programs.

6 Non-disclosure obligation

6.1 Confidential information in the meaning of this section is all information which is marked in writing as confidential or is referred to orally as confidential at the time of disclosure and is described as confidential in a written notice, which must be received by the contractual partner concerned within 30 days of disclosure. This non-disclosure obligation does not apply for information which (a) is in or enters the public domain without the contractual partner concerned being responsible for this; or (b) was already known by the contractual partner concerned prior to disclosure and was not provided either directly or indirectly by the contractual partner disclosing the information; or (c) was lawfully provided to the contractual partner concerned by a third party without any non-disclosure obligation; or (d) must be disclosed by law or court order, provided the disclosing contractual partner informs the contractual partner concerned about the need for disclosure so that it can take appropriate defense measures.

6.2 The contractual partners agree that the confidential information of other contractual partner in each case is to be treated confidentially for the duration of the business relationship and for a period of three years after such has terminated. The contractual partners undertake not to make the confidential information accessible to any third party in any form and only to use the confidential information of the other contractual partner in each case for the purpose of performing the relevant contract. Both contractual partners will take all steps necessary to ensure that confidential information is not used, published or disclosed by employees or agents in breach of contract.

7 Term, termination of contracts

7.1 The contracts to be entered into between OFF LIMITS and the client take effect upon signature by the parties and unless agreed otherwise are entered into for an unlimited period of time.

7.2 The termination of all contracts without specifying any reasons is possible for both contractual parties subject to observance of a notice period of three months with effect at the end of a calendar month. Any notice of termination must be in writing.

7.3 The right to terminate any contract without notice for cause remains unaffected.

7.4 A right to terminate any contract without notice for cause in particular exists if

- one of the contractual parties has not met any of the material contractual obligations incumbent upon it;
- is in default of payment with respect to the fee owed to OFF LIMITS for a period of more than two months or has conclusively discontinued payment or temporarily refused payment;
- the opening of insolvency proceedings over the assets of the client has been applied for or such insolvency proceedings have been rejected due to a lack of assets or any other enforcement proceedings have been opened or the client has become insolvent in any other way.

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8 Non-solicitation of employees

The client undertakes during the provision of all services by OFF LIMITS and for a period of twelve months thereafter not to solicit any employees of OFF LIMITS. The client also undertakes not to induce employees of OFF LIMITS either directly or indirectly to terminate their contractual relationship with OFF LIMITS. All employees, advisors, subcontractors or agents used by OFF LIMITS to provide the performance owed by it are deemed employees of OFF LIMITS.

9 Independence of the contractual partners

OFF LIMITS is an independent contractual partner of the client. This business relationship expressly does not substantiate any partnership, joint venture or agency relationship between the contractual parties. Each contractual partner is solely responsible for the payment of all remuneration to its employees and any wage taxes and social benefits. Both contractual partners undertake to take out appropriate occupational accident and liability insurance. Both contractual parties undertake to instruct and appropriately monitor their employees, subcontractors and agents on the site of the other contractual partner in each case with respect to all relevant safety guidelines.

10 Advertising

The client expressly agrees that OFF LIMITS may use the client's name for its own advertising, refer to the client as its business partner and may also refer to the fact that the parties have entered into a business relationship. The client also agrees that all further information relating to the business relations and the activities of the contractual partner are disclosed in the content of press releases if OFF LIMITS can evidence a legitimate interest in this. Such disclosure requires the express consent of the client, which may not, however, be unreasonably refused.

11 Third-party rights

The client warrants that it is in possession of all rights required in order to provide OFF LIMITS with access to the client's systems if this is necessary for the provision of the performance owed in each case. The client undertakes to evidence the relevant authorizations to OFF LIMITS in writing upon request. The client indemnifies OFF LIMITS against all claims, in particular claims for damages, fees and costs, including all fees of legal advisors, which are based on court or out-of-court disputes due to any infringement of third-party rights which has occurred or is alleged, provided the (alleged) infringement of rights is based on information, instructions, data or materials of the client. OFF LIMITS has the right to participate in the defense against any third-party claims, both in court proceedings and in out-of-court proceedings.

12 Place of performance and jurisdiction

12.1 These General Terms and Conditions and any individual contracts are governed exclusively by the laws of the Federal Republic of Germany. Any application of the provisions of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.

12.2 The place of performance is where OFF LIMITS has its registered office.

12.3 Provided legally permissible, the courts where OFF LIMITS has its registered office have exclusive jurisdiction for all legal disputes between the parties, including actions filed in connection with checks and bills of exchange.

12.4 The client may only set off any claims against payments owed to OFF LIMITS if such claims have been recognized by OFF LIMITS or have been declared final and absolute by a court of law.

12.5 The assignment by the client of rights and obligations to a third party requires written consent on the part of OFF LIMITS.

13 Final provisions; severability clause

13.1 These General Terms and Conditions together with the individual contracts entered into between the parties for the entire contractual agreement. In the event of any conflicts between these General Terms and Conditions and the provisions of any individual contract, the provisions of the relevant individual contract have precedence.

13.2 General terms and conditions of the client which contradict these provisions do not have any validity. Their application is expressly excluded by the contractual parties.

13.3 Should one or more of the provisions of these General Terms and Conditions be or become invalid or void or should there be any omission in these General Terms and Conditions, this shall not affect the effectiveness or validity of the remaining provisions. The contractual parties undertake in such a case to replace the invalid or void provisions with legally effective provisions which come closest to the invalid or void provisions.