

# General Terms and Conditions

of the COSMO CONSULT group of companies

## 1. Scope of Application

- 1.1. These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all contracts concluded by COSMO CONSULT AG or its affiliated companies or companies of the COSMO CONSULT group of companies (hereinafter collectively referred to as "COSMO CONSULT") with companies (hereinafter referred to as "CUSTOMER") regarding deliveries and services of COSMO CONSULT. In addition, the Special Terms and Conditions for Subscription, License Purchase, Support, Cloud Services and Services shall apply.
- 1.2. These General Terms and Conditions shall also apply to all future orders placed by the CUSTOMER, unless expressly agreed otherwise.
- 1.3. The CUSTOMER's GTC or terms and conditions of purchase shall not apply, even if COSMO CONSULT does not explicitly object to them. This shall also apply if the CUSTOMER refers to its own GTC or purchasing conditions in a confirmation letter.
- 1.4. Deviating agreements shall only be binding if they have been confirmed by COSMO CONSULT at least in text form (e.g. by e-mail, DevOps, Customer Portal, Teams).

## 2. Definitions

- 2.1. Special Terms means general terms and conditions that apply to specific areas in addition to these

GTC. These include Special Terms and Conditions for Subscription, License Purchase, Support, Cloud Services and Services.

- 2.2. Trade secrets means information,
  - which is not generally known or readily accessible, either as a whole or in the precise arrangement and composition of its component parts, to persons in the circles which normally handle that type of information and is therefore of economic value, and
  - which is the subject of confidentiality measures appropriate in the circumstances by its rightful holder and for which there is a legitimate interest in maintaining confidentiality.
- 2.3. Individualization means software created individually for the CUSTOMER as well as configurations, modifications, extensions and adaptations of software.
- 2.4. Licensing refers to the granting of rights to use standard software. This can alternatively involve licenses for a limited period of time (subscription) or licenses for an unlimited period of time (license purchase).
- 2.5. Cloud services refers to services about providing access to software and resources over the Internet.
- 2.6. Standard software refers to a software system which, as a prefabricated product, does not include any individual adaptations.

- 2.7. Support means Support services.
- 2.8. Working days means all calendar days, unless they fall on a Saturday, Sunday or public holiday at COSMO CONSULT's place of performance.
- 2.9. Contractual services means all agreed deliveries and services that fall within the scope of these GTC.

### 3. Scope of Services

- 3.1. The scope of the contractual services results from these General Terms and Conditions, the respective Special Terms and Conditions as well as the associated order form(s) and, if applicable, its annexes.
- 3.2. As far as only functionalities or tasks are described therein, the concrete realization and/or implementation is at the discretion of COSMO CONSULT, taking into account the state of the art.
- 3.3. Services that go beyond the contractually agreed scope of services (hereinafter referred to as "additional services") may be ordered by the CUSTOMER and shall be remunerated additionally in any case. Unless otherwise agreed, this remuneration shall be calculated on a time and material basis in accordance with COSMO CONSULT's current price list. If the CUSTOMER requests that additional services be carried out outside of normal working hours, a surcharge shall be levied for these, which shall also be based on COSMO CONSULT's current price list.

- 3.4. The CUSTOMER shall remain solely responsible for all business decisions made by the CUSTOMER on the basis of the data or information provided by COSMO CONSULT within the framework of the provision of services.

- 3.5. In the event of any inconsistency in the contractual documents, the following order of precedence shall apply:

- the relevant license terms (COSMO CONSULT EULA, Microsoft, third-party providers)
- this GTC
- the relevant Specific Conditions
- The other related annexes

The only exception shall be if an express deviation is agreed in a subordinate provision according to the above order and the provision from which the deviation is to be made is cited.

### 4. General Cooperation Obligations of the CUSTOMER (at its own Expenses)

- 4.1. The parties are jointly responsible for the successful cooperation. All persons on the part of the CUSTOMER to whom a responsibility is assigned shall fulfil the tasks incumbent upon them.
- 4.2. The CUSTOMER shall cooperate closely with COSMO CONSULT in the performance of the contractual services and shall provide COSMO CONSULT with all information necessary for the

- performance of the contractual services upon request.
- 4.3. The CUSTOMER undertakes vis-à-vis COSMO CONSULT to provide its own personnel who are familiar with its requirements for the contractual services and who are qualified to enable COSMO CONSULT to provide the contractual services. In particular, the CUSTOMER shall provide the aforementioned personnel in sufficient form for meetings, workshops and for participation in training courses as well as for the performance of tests.
- 4.4. The CUSTOMER shall perform all acts of cooperation required for the performance of the contractual services in a timely manner upon request and shall create all necessary organisational prerequisites in its business; this includes in particular the following obligations of the CUSTOMER to cooperate:
- Provision of all work equipment, hardware and software and premises in sufficient quantity required for the performance of the agreed services on site;
  - Provision of high-performance remote access for COSMO CONSULT to the CUSTOMER's systems according to COSMO CONSULT's specifications, including the corresponding authorizations;
  - Provision of competent employees of the CUSTOMER to the extent required;
  - Demand-driven management and control of the CUSTOMER's staff and capacities.
- 4.5. The CUSTOMER shall inspect all contractual services immediately after they have been provided and notify any defects in text form without delay. It shall describe the defects as precisely as possible.
- 4.6. The CUSTOMER shall inform COSMO CONSULT in text form in good time of technical changes at the CUSTOMER, changes in the CUSTOMER's work processes and new acquisitions by the CUSTOMER which necessitate changes to the contractual services.
- 4.7. If COSMO CONSULT does not provide cloud services for the CUSTOMER, the CUSTOMER is responsible for performing backups. In this case, the CUSTOMER is obliged to properly back up all data and programs on a regular basis (at least daily). COSMO CONSULT shall therefore not be liable for the loss of data or programs or for the costs of restoring data or programs if the CUSTOMER fails to meet this obligation, fails to meet it completely or fails to meet it properly.
- 4.8. The CUSTOMER shall grant COSMO CONSULT the access to buildings, systems, networks and facilities necessary for the performance of the contractual services.

- 4.9. The CUSTOMER shall use the software, if it is operated on its premises, only in properly functioning environments.
- 4.10. The CUSTOMER shall comply with its legal obligations in connection with the contractual services, including those arising from laws on the import and export of software and related technical data.
- 4.11. The CUSTOMER shall bear sole responsibility for checking tax-relevant data for completeness and correctness and for providing the required information and declarations to the tax office responsible for the CUSTOMER in a timely manner. COSMO CONSULT shall not be subject to any obligations to cooperate or provide information in this respect.
- 4.12. The CUSTOMER shall be liable for third parties who work or provide cooperation services in the field of activity of COSMO CONSULT at the instigation of or with the toleration of the CUSTOMER, as if they were vicarious agents. COSMO CONSULT shall not be responsible to the CUSTOMER if it is unable to fulfil its obligations to the CUSTOMER in full or in part or in good time due to the conduct of one of the aforementioned third parties.
- 4.13. Further obligations to cooperate on the part of the CUSTOMER result from the relevant Special Conditions.

## 5. Registered Partner

The CUSTOMER agrees to designate COSMO CONSULT as a registered partner with respect to Microsoft license products and license products of other manufacturers and to make the necessary settings for this purpose.

## 6. Dates, Delay

- 6.1. Specified dates are generally non-binding, unless they are expressly marked as binding in writing.
- 6.2. Events of force majeure entitle COSMO CONSULT TO postpone the fulfilment of its obligations for the duration of the hindrance.
- 6.3. COSMO CONSULT can only meet dates if the CUSTOMER fulfils its obligations to cooperate fully and in good time. COSMO CONSULT shall not be responsible for delays in delivery and service provision caused by the CUSTOMER, in particular due to incorrect, incomplete or subsequently changed details, information and documents, as well as other delays within the CUSTOMER's sphere of influence, and these shall not lead to a delay on the part of COSMO CONSULT. Additional effort caused by such delays may be invoiced by COSMO CONSULT at the service rates according to the offers.
- 6.4. If the CUSTOMER wishes to interrupt the provision of services, it must notify COSMO CONSULT of this at least six weeks in advance in text form, whereby the

notification must also contain information on the desired duration of the interruption. The parties shall then agree on a new schedule and an appropriate postponement of agreed deadlines. If the aforementioned notification is not made or is made late, COSMO CONSULT may invoice the scheduled time for the assigned employees as compensation for the provision of manpower for the period by which the notification is delayed, but at the latest until the resumption of the service provision, at the service rates according to the offers. This does not apply if COSMO CONSULT is able to use the assigned employees in a billable way elsewhere. If, as a result of the interruption, new COSMO CONSULT employees have to be trained, the additional effort required for this may be invoiced by COSMO CONSULT at the service rates according to the offers.

## 7. Warranty Rights

- 7.1. The CUSTOMER's warranty rights are set out in detail in the relevant Special Terms and Conditions.
- 7.2. The CUSTOMER shall only be entitled to claim damages under the conditions and within the limits set out in No. 8.
- 7.3. The CUSTOMER's warranty rights shall expire one year after the provision of the respective contractual service or, if applicable, after acceptance.
- 7.4. A prerequisite for the CUSTOMER's warranty rights is the reproducibility of the defect complained of.
- 7.5. Insofar as COSMO CONSULT has provided specifications for hardware and software for the use of the contractual services, it is a prerequisite for warranty rights that the contractual services are used exclusively with hardware and software components that comply with the specifications. Functional impairments resulting from the hardware and software environment used by the CUSTOMER, incorrect operation, external defective data, disruptions of computer networks or other reasons originating from the CUSTOMER's sphere of risk shall not be considered defects.
- 7.6. If the CUSTOMER itself carries out a change of the contractual services, in particular a change of the source code or a complete or partial deactivation or has it carried out by a third party, the warranty rights are excluded, unless the CUSTOMER proves that the defect is not due to the action carried out or caused by it.
- 7.7. If COSMO CONSULT provides services in the search for or elimination of defects without being obligated to do so, COSMO CONSULT may demand the reasonably necessary and appropriate remuneration for this in accordance with COSMO CONSULT's price list, insofar as the expense was caused by the CUSTOMER. This shall apply in particular if a defect cannot be

proven or reproduced and in the case of other unjustified notices of defect. Expenditure caused by unjustified notices of defects shall be remunerated according to COSMO CONSULT's current hourly rates.

## 8. Limitation of Liability

8.1. COSMO CONSULT shall be liable without limitation damages caused intentionally or by gross negligence.

8.2. In the event of simple or slight negligence on the part of a legal representative or vicarious agent, COSMO CONSULT's liability shall be limited to the typically foreseeable damage in the event of a breach of material contractual obligations (such obligations whose fulfilment is essential for the proper performance of the contract and on whose fulfilment the CUSTOMER regularly relies and may rely). In all other respects, any further liability on the part of COSMO CONSULT is excluded in the case of simple or slight negligence.

8.3. The parties agree that in the case of No. 8.2 the typically foreseeable damage is limited to the amount of the remuneration agreed in the respective order form. In the event of remuneration to be paid pro rata temporis, the aforementioned limitation per calendar year shall be understood to mean the annual remuneration.

8.4. In deviation from No. 8.2 and 8.3, COSMO CONSULT shall be liable without limitation for damages

arising from injury to life, body or health that are based on an intentional or negligent breach of duty or on an intentional or negligent breach of duty by a legal representative or a vicarious agent of COSMO CONSULT.

8.5. Insofar as COSMO CONSULT's liability is limited in accordance with the above provisions, this shall also apply to any liability of its executive bodies, employees, freelancers, staff, representatives and vicarious agents.

8.6. All claims for damages, with the exception of those named in No. 8.1 and 8.4, are subject to a limitation period of two years. The limitation period begins at the end of the year in which the claim arose. The statutory limitation period shall apply to the claims specified in No. 8.1 and 8.4.

8.7. In the event of data loss, COSMO CONSULT shall only be liable for reimbursement of expenses for restoring the data up to the last data backup.

## 9. Force Majeure

Neither party shall be liable for events constituting force majeure, including, but not limited to, war, pandemics, epidemics, riots, insurrections, general strikes, fires, natural disasters, exchange controls, embargoes, failure of telecommunications, electricity or the Internet, power failure, serious computer viruses and force majeure at

suppliers not caused by the obligated party.

In the event of force majeure, the affected party shall immediately inform the other party of its occurrence. Both parties may request a negotiation on an adjustment of the dates of the contract affected by the force majeure.

## 10. Rights of Use

- 10.1. Standard Software: The CUSTOMER's rights to use the standard software provided under these GTC shall be governed by the Special Terms and Conditions for Subscription or License Purchase and its annexes.
- 10.2. Individualizations: Upon payment in full, COSMO CONSULT shall grant the CUSTOMER the non-exclusive, non-transferable right of use for internal company use in the object code for individualizations created within the scope of these GTC, including documentation and training documents, as well as for other work results created under these GTC.
- 10.3. The CUSTOMER is not entitled to pass on individualizations in whole or in part to third parties in any way, whether in return for payment or free of charge. In particular, the CUSTOMER is not entitled to grant sublicenses to the individualizations or parts thereof, to distribute, rent or lease them. The CUSTOMER is not permitted to further develop, translate, arrange or otherwise process the individualizations.
- 10.4. The CUSTOMER shall only have the right to make a backup copy if it is necessary for securing future use.
- 10.5. The CUSTOMER shall have the right to decompile only to obtain the information necessary to make a computer program created independently under these GTC interoperable with other programs, provided that the following conditions are met:
- The CUSTOMER has requested COSMO CONSULT twice in writing, setting a deadline, without success, to establish interoperability;
  - the actions are performed by the CUSTOMER or on behalf of the CUSTOMER by a third party authorized to do so;
  - the information necessary to achieve interoperability has not yet been made available to the CUSTOMER or to the third party authorized to do so on behalf of the CUSTOMER;
  - the actions are limited to the parts of the program necessary to achieve interoperability.
- The information obtained in this way must not:
- used for purposes other than to achieve interoperability of the independently created program,
  - be disclosed to third parties, unless this is necessary for the



- interoperability of the independently created program,
- used for the development, production or marketing of a program substantially similar in expression or for other acts infringing copyright.
- 10.6. Nos. 10.2 to 10.5 shall apply mutatis mutandis to applications of artificial intelligence, in particular to algorithms, to the extent that they are legally protectable.
- 10.7. The source code shall remain with COSMO CONSULT and shall not be the subject of the granting of rights under this No. 10 unless expressly agreed otherwise in writing.
- 10.8. In all other respects, all rights to the contractual services shall remain with COSMO CONSULT.
- ## 11. Remuneration
- 11.1. The remuneration shall be based on the respective Special Terms and Conditions and the respective orders or contracts as well as, in addition, on the COSMO CONSULT price list.
- 11.2. The necessity of travel shall be mutually agreed by the parties. The CUSTOMER shall reimburse expenses, accommodation costs and travel costs according to expenditure. The reimbursement of travel time shall be governed by the respective individual contracts.
- 11.3. The remuneration pursuant to this No. 11 is exclusive of the respective statutory value added tax and any other taxes that may be incurred.
- 11.4. The remuneration pursuant to this No. 11 shall be due immediately upon receipt of the invoice and shall be paid within 10 (ten) calendar days of receipt of the invoice without deduction to the account specified in the invoice.
- 11.5. If the CUSTOMER is in arrears with advance payments, part payments or payments on account, COSMO CONSULT shall have the right to refuse performance, irrespective of other claims, provided that COSMO CONSULT has previously sent at least two reminders.
- 11.6. In the event of default in payment, interest on arrears amounting to 9 (nine) percentage points above the base interest rate shall be payable; further legal claims by COSMO CONSULT shall remain unaffected.
- 11.7. COSMO CONSULT shall retain ownership and all rights of use of all contractual services until full payment of the remuneration to be paid by the CUSTOMER in each case. Until then, however, the CUSTOMER shall be revocably entitled to provisional use.
- ## 12. Subcontractors, Employees
- 12.1. COSMO CONSULT may provide the contractual services through its own employees, other vicarious agents or subcontractors. COSMO CONSULT shall nevertheless remain responsible to the CUSTOMER for the proper performance of the contractual services.
- 12.2. COSMO CONSULT decides whether contractual services are to be

provided on the CUSTOMER's premises or at other locations. Even if COSMO CONSULT employees are deployed at the CUSTOMER's premises, the right to issue instructions and directives shall remain with COSMO CONSULT without restriction.

12.3. COSMO CONSULT IS committed to employing qualified personnel.

12.4. The parties are prohibited from hiring or employing as freelancers employees or freelancers of the other party during the term of a contract or for a period of twelve months after the termination of this contract, unless the employee or freelancer has applied for an advertised position of this party.

### 13. Confidentiality

13.1. Confidential information is all information and business secrets, as well as knowledge and results obtained and apparent therefrom (whether in writing, electronically, orally, digitally embodied or in any other form), which are disclosed, communicated or otherwise made accessible by one party to the other party in connection with the performance of the contractual services. Confidential information shall be deemed to include in particular:

- Business and sales data, tender documents, organizational information, processes, know-how, calculation methods, company concepts, business

strategies and business models, business plans, planning data;

- Software including pre-development, source codes, project methodology, artificial intelligence applications, algorithms;
- Customer data, employee data, supplier data;
- any information of the discloser which is subject to technical and organizational secrecy measures and which is marked as confidential or is to be regarded as confidential according to the nature of the information, the circumstances or on the basis of a reasonable commercial judgement.

13.2. The parties are obliged to maintain strict confidentiality of all confidential information during and also after termination of the contract, whereby the confidential information is to be protected against unauthorized access by third parties by means of appropriate confidentiality measures. Neither party may reproduce or publish the same, at least in text form, or otherwise disclose it to third parties or otherwise use or exploit it for non-contractual purposes without the prior consent of the other party.

13.3. Information shall not be considered to be confidential if it was known to the public at the time it came to the knowledge of one party, or if it comes to the knowledge of the public after that time without the intervention of

- that party, or if that party has received the information from a third party not subject to an obligation of confidentiality, or if that party has acquired the information independently and without using the confidential information of the other party.
- 13.4. Each party shall be released from the obligation of confidentiality if and to the extent that information about confidential information is requested from that party by an authority, a court or another governmental body. This party is obliged to inform the other party without delay and to inform the other party of the body from which information was requested and to what extent.
- 13.5. The party obliged to provide information shall endeavour to keep the scope of the information to be disclosed as small as possible and, if possible, obtain an assurance that the information disclosed will be treated confidentially. The party obliged to provide information shall make reasonable efforts to give the other party the opportunity to defend itself against this request for information.
- 13.6. After termination of the contractual relationship, the parties shall be mutually obliged, upon written request of the respective other party, to return or destroy existing documents containing confidential information.
- 14. Data Protection**
- 14.1. The parties shall comply with the statutory provisions on data protection, in particular in accordance with the EU General Data Protection Regulation (GDPR), and shall regularly monitor compliance therewith.
- 14.2. The parties will only use employees who have been committed in writing to data protection and confidentiality.
- 14.3. The CUSTOMER's data shall be processed exclusively in accordance with the CUSTOMER's instructions for the performance of this contract or on a legal basis. Insofar as COSMO CONSULT processes or uses the CUSTOMER's personal data in the course of providing the contractual services, this shall take the form of commissioned processing in accordance with Art. 28 GDPR.
- 14.4. Unless otherwise agreed, the CUSTOMER shall also be solely responsible for the technical and organizational measures to protect its systems.
- 15. Changes to the GTC**
- 15.1. COSMO CONSULT is entitled to amend these GTC with effect for the future. An exception to this is a change to the main performance obligations. Main performance obligations are those obligations that enable the proper execution of the contract in the first place and on

whose compliance the contracting parties may regularly rely.

- 15.2. COSMO CONSULT shall inform the CUSTOMER in advance of the changes in text form and give the CUSTOMER the opportunity to object to the changes in text form within a reasonable period of time after receipt of the change information. In doing so, COSMO CONSULT will specifically point out to the CUSTOMER that in the absence of an objection the changes will become effective.

## 16. Final Provisions

- 16.1. The place of jurisdiction for all legal disputes between the parties arising from and in connection with these GTC and the respective Special Terms and Conditions shall be the respective registered office of COSMO CONSULT.
- 16.2. The contractual relations are subject to German law to the exclusion of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG).
- 16.3. The CUSTOMER may only assign rights in connection with these GTC and the respective Special Conditions with the written consent of COSMO CONSULT.
- 16.4. The CUSTOMER may not offset claims arising directly or indirectly in connection with these General Terms and Conditions and the respective Special Terms and Conditions against counterclaims if these have not been legally established or recognized by COSMO CONSULT.
- 16.5. All changes or amendments must be in writing to be effective and must be signed by both parties. Terminations and declarations of withdrawal must also be in writing in order to be effective. This also applies to the cancellation of this written form requirement.
- 16.6. Should any provision of these GTC or the Special Conditions be invalid, this shall not affect the validity of the remaining provisions. The parties shall immediately replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision.
- 16.7. COSMO CONSULT may carry out an examination of the CUSTOMER's creditworthiness, exercising due discretion. To this end, the CUSTOMER shall instruct and authorize financial institutions and other third parties in business contact with it to provide COSMO CONSULT with information.
- 16.8. Should disputes arise from and in connection with these General Terms and Conditions or the respective Special Terms and Conditions, the parties undertake to first make reasonable efforts to find an amicable solution.