

General Terms and Conditions of imk Industrial Intelligence GmbH for Technological Services

(Non-binding English translation, valid as of 23.02.2023)

I. General provisions

§ 1 Scope

(1) imk Industrial Intelligence GmbH, Amselgrund 30, 09128 Chemnitz ("IMK") provides its deliveries and services in business transactions with entrepreneurs, legal entities under public law or special funds under public law exclusively on the basis of these General Terms and Conditions ("GTC"), insofar as reference is made thereto in the *individual contract*. Insofar as in the following reference is made to performance or services, this shall be understood to mean all deliveries and services of whatever kind by IMK to the customer in accordance with sentence 1. If the masculine form is used in reference to persons, female and diverse persons are also meant in each case subject to a deviating regulation in individual cases.

(2) IMK does not provide services to consumers in the sense of § 13 BGB. In connection with the services mentioned in paragraph 1, the GTC also apply to all pre-contractual obligations as well as to all future contracts, even if they are not expressly agreed upon again. For a future contract, not the present but a newer version of the GTC shall apply if IMK has informed the customer of the existence of the newer version before or at the latest upon conclusion of the contract and how the customer can easily take note of its contents.

(3) In the event that the customer does not wish to have the GTC apply, he must notify IMK of this in writing before or at the time of conclusion of the contract. Deviating (purchasing) terms and conditions of the customer or third parties are contradicted. Therefore, the terms and conditions of the customer or third parties do not apply even if IMK does not separately object to their validity in individual cases or if IMK refers to a letter that contains or refers to terms and conditions of the customer or a third party.

(4) No authorized dealer agreement or other distribution agreement shall come into existence between the parties, even in the event of repeated deliveries. Likewise, neither exclusivity nor territorial protection is agreed. Such agreements must be in writing; this shall also apply to any agreement to waive the written form. The application, including the analogous application, of commercial agency law is excluded.

(5) References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

§ 2 Definitions

For the purposes of these GTC is or are

1. *Foreign trade restrictions* Prohibitions and restrictions due to the foreign trade law applicable to the specific *individual contract* and its fulfillment (in particular export control and/or customs regulations including embargos and provision prohibitions), in particular according to the foreign trade law of the Federal Republic of Germany as well as of the country in which the customer has its registered office or to which and through which the intended delivery or service is made;
2. *Prohibition of provision* Foreign economic prohibition on the direct or indirect provision of funds, technical assistance, or economic resources to specific persons, countries, entities, or organizations;
3. *Order* a binding offer by the customer to conclude an *individual contract*;
4. *Individual contract* the contract concluded in the individual case within the scope of these GTC;
5. *Free license* a royalty-free license to use, redistribute, and modify copyrighted works under certain conditions specified in the license terms (e.g., for open source software under the BSD License or for images under the Creative Commons License).

§ 3 Individual contract

An *individual contract* and thus a contractual obligation for the individual services comes about through an *order* confirmation by IMK, through conclusive action, in particular if IMK begins with the contractual provision of services after the *order*, or through the customer accepting a binding offer by IMK. The product and service descriptions of IMK do not yet constitute a binding offer.

§ 4 Content of IMK services

- (1) The concrete content of the services owed by IMK results from the *individual contract* together with any agreed amendments and supplements to the contract.
- (2) IMK is entitled to minor deviations from the agreed service provision, provided that these do not impair the quality of the service and are reasonable for the customer.
- (3) Product descriptions, representations, test programs, etc. are descriptions of performance and do not constitute a warranty of quality. The guarantee must be in writing to be effective.
- (4) As long as services of IMK are free of charge for the customer, the services of IMK are purely voluntary and the customer has no claim against IMK for continuation of the services. IMK reserves the right to discontinue the free services at any time without prior notice.
- (5) IMK may also provide its services through third parties.
- (6) All employees that IMK deploys at or for the customer remain organizationally with IMK, subject to an explicit and written agreement in the *individual contract*, regardless of whether they are deployed at the customer for a longer period of time. Only IMK is authorized to give instructions to its employees. Any instructions by the customer are only considered suggestions and are only binding if IMK takes up these suggestions and passes them on to its employees as binding instructions. The customer will send suggestions regarding the service to be provided exclusively to the responsible contact person named by IMK and/or his deputy (Item IV. § 31). The persons employed by IMK do not enter into an employment relationship with the customer, even if they perform services on the customer's premises.

§ 5 Place of service provision by IMK

Unless otherwise agreed in the *individual contract*, IMK shall provide all services at IMK's place of business. Insofar as the provision of services requires access to the customer's systems and/or processing at the customer's place of business, the further details shall be regulated in the *individual contract*.

§ 6 Remuneration, additional costs

- (1) The prices result from the *individual contract* together with any agreed amendments and supplements to the contract.
- (2) In the absence of an express price agreement, the prices are derived from the current price list valid at the time of the agreement of the respective service provision, which can be requested from IMK at any time.
- (3) If the parties have determined daily rates or person days within the framework of the remuneration according to time and effort, IMK shall owe the performance of a maximum of eight person hours on one calendar day. If IMK provides additional person hours on a calendar day, these are to be additionally remunerated pro rata temporis subject to a deviating agreement in the *individual contract*, unless the time overrun contradicts the recognizable wish of the customer or his objective interest. If hourly rates are agreed, these shall be remunerated per 15 minutes or part thereof.
- (4) The prices quoted are exclusive of any taxes, duties and levies that may be incurred in the cross-border movement of goods and services, the ancillary costs of monetary transactions and the respective statutory value-added tax.
- (5) Unless otherwise agreed, the customer shall bear all out-of-pocket expenses such as travel and accommodation costs, expenses and third-party claims for remuneration incurred in the course of the performance of the contract against evidence. Travel times shall be remunerated in the same way as working hours.
- (6) If the parties have not reached an agreement on the remuneration of a service of IMK, the performance of which the customer could expect according to the circumstances only against remuneration, the customer shall pay the remuneration customary for this service. In case of doubt, the rates of remuneration demanded by IMK for its services shall be deemed customary.
- (7) Costs caused by subsequent changes to the content of the service initiated by the customer shall be charged separately.

§ 7 Payment and default

- (1) Unless otherwise agreed, IMK's invoices are to be paid immediately, at the latest, however, 10 days after receipt of the invoice and without deduction. In the case of a permissible partial delivery, this can be invoiced immediately. Invoicing can be done electronically. Insofar as payment in advance has been agreed, performance by IMK will only take place after receipt of payment.
- (2) If the customer is in default, the customer will be charged interest at the statutory rate from the relevant date. IMK reserves the right to assert a higher damage caused by delay. Other rights of IMK remain unaffected; this applies in particular to the rights of IMK to refuse performance under §§ 273 and 320 BGB as well as the right of IMK to terminate for cause.

(3) IMK is entitled to set off payments against older debts of the customer first, despite contrary provisions of the customer, and will inform the customer about the type of set-off made. If costs and interest have already been incurred, IMK is entitled to offset the payment first against the costs, then against the interest and finally against the principal claim.

(4) All payments shall be made in Euro and, subject to a deviating agreement in the *individual contract*, by bank transfer to an account designated by IMK. A payment shall only be deemed to have been made when IMK can dispose of the amount.

(5) If IMK becomes aware of circumstances that objectively call into question the customer's creditworthiness, in particular if the customer stops payments or if a direct debit is returned for lack of sufficient funds, IMK is entitled to call due the entire remaining debt. In this case, IMK is also entitled to demand advance payments or the provision of security.

(6) IMK is entitled, under the legal conditions, to demand partial payments in the amount of the value of the services rendered by IMK and owed according to the contract.

§ 8 Export control and embargoes

(1) The delivery or service shall exclusively serve the purposes specified in the *individual contract*. Unless otherwise agreed in the *individual contract*, the customer warrants that the delivery or service will not become part of a delivery or service by the customer or its end customers in connection with any of the following technologies: Armaments Technology, Weapons, Missiles Capable of Carrying Weapons, and/or Nuclear Technology.

(2) Furthermore, the customer guarantees that the delivery or service will not be used by the customer or its end customers in violation of foreign trade restrictions. The customer shall check the intended delivery or service for all possible foreign trade restrictions at the earliest possible time, as far as possible and reasonable already before the *order*, and shall inform IMK immediately if indications of possible *foreign trade restrictions* arise. Further details shall be set out in the *individual contract*.

(3) IMK may refuse to fulfill the obligations under the *individual contract* to the extent that fulfillment is prohibited or impaired by *foreign trade restrictions*. IMK will inform the customer immediately about such circumstances.

(4) If IMK refuses the delivery or service due to a *provision prohibition* and the customer disputes the existence of a *provision prohibition*, the customer will, as far as possible and reasonable, request a written confirmation from the competent authority that IMK does not violate the foreign trade law applied by the authority with the fulfillment of the obligations from the *individual contract*. If such confirmation is not provided within a reasonable period of time, the parties shall assume the existence of a *provision prohibition*. Likewise, the Parties shall assume the existence of a *provision prohibition* if the application for the confirmation to the competent authority is impossible or unreasonable and there are objective indications that the violation of a *provision prohibition* is possible.

(5) Claims for damages and reimbursement of expenses of the customer due to the aforementioned *foreign trade restrictions* are excluded, as far as the *foreign trade restriction* is not the responsibility of IMK itself (e.g. because IMK is no longer classified as reliable by the export control authorities due to a previous conduct contrary to export control law) or IMK has fraudulently deceived the customer about the existence of the *foreign trade restriction*. IMK is not liable for a mere negligent ignorance of a *foreign trade restriction*. For the scope and amount of liability for damages and reimbursement of futile expenses due to a *foreign trade restriction* for which IMK is responsible, § 19 ("Liability of IMK") applies.

(6) Without prejudice to further legal or contractual obligations to provide information, the customer shall immediately inform IMK of all circumstances and provide all documents required under the foreign trade law of the country,

- a) in which the customer has its registered office,
- b) in which the intended delivery or service as well as the
- c) through which the intended delivery or service takes place,

are necessary or expedient for a smooth fulfillment of IMK's obligations. This includes in particular information on the end customer, the country of destination and the intended use of the delivery or service.

§ 9 Dates, deadlines and obstacles to performance

(1) Delivery and performance dates or deadlines are agreed as non-binding. If they are to be binding by way of exception, this shall require an express and written agreement. The schedule provided for the services to be rendered can be regulated in the *individual contract*.

(2) IMK is not liable for an impossibility of performance or delays in performance due to force majeure or other events not foreseeable at the time of the conclusion of the contract - these include in particular operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, pandemics, strikes, lawful lockouts, official orders or non-delivery, incorrect delivery or late delivery by suppliers, even if they occur at suppliers of IMK or their sub-suppliers, problems with products or services of third parties for which IMK is not responsible. IMK will inform the customer immediately about such circumstances.

(3) Insofar as events for which IMK is not responsible within the meaning of paragraph 2 make it significantly more difficult or impossible for IMK to perform and the hindrance and the obstacle is not only of temporary duration, IMK is entitled to withdraw from the obligation to fulfill the contract; IMK will immediately refund any consideration already paid by the customer for the unfulfilled part. If such events lead to obstacles of temporary duration, the delivery or service deadlines are extended or postponed by the period of the obstacle plus a reasonable start-up period. IMK will inform the customer immediately of the expected new dates or deadlines. If the impediment lasts longer than two months, the customer is entitled to terminate the respective *individual contract* with regard to the part not yet fulfilled after setting an appropriate grace period with threat of refusal. Further legal rights of the customer remain unaffected. Likewise, the legal regulations existing in favor of IMK regarding the exclusion of the obligation to perform according to § 275 BGB remain unaffected.

(4) Paragraph 3 sentence 2 shall apply if the customer fails to cooperate in breach of the contract, e.g. fails to provide information, fails to provide access, fails to provide supplies or fails to make employees available, or if the customer is in default of payment. However, a right of the customer to withdraw from the contract or to terminate the contract is excluded in these cases.

(5) If the parties subsequently agree on other or additional services that affect agreed deadlines, these deadlines shall be extended by a reasonable period of time.

§ 10 Reminder and grace period by the customer, requirement of fault in case of withdrawal or termination

(1) The termination of the further exchange of services as a result of performance disruptions (e.g. in the case of withdrawal, termination for good cause or damages in lieu of performance) as well as the reduction of the agreed remuneration by the customer must always be threatened, irrespective of the further legal requirements, by naming the reason and setting a reasonable grace period for rectification. Only after fruitless expiry of the deadline can the termination or reduction become effective. In the cases of § 323 para. 2 BGB, the setting of a deadline may be omitted.

(2) All declarations by the customer in this context, in particular reminders and extensions of time, must be in writing to be effective. A grace period must be reasonable. A period of less than two weeks set by the customer shall only be reasonable in the event of particular urgency.

(3) Due to a breach of duty that does not consist of a defect, the customer may only withdraw or terminate the contract if IMK is responsible for the breach of duty.

§ 11 Set-off, retention and assignment

(1) The customer shall only be entitled to set-off and retention if the counterclaims due have been legally established, are undisputed or are ready for decision. The customer is, however, without the further requirements from sentence 1

- a) is also entitled to set-off if he wants to set off a claim against a claim of IMK which is in a reciprocal relationship to the claim of the customer (e.g. set-off with a claim for damages due to non-performance or default against the claim for payment of the remuneration owed),
- b) shall also be entitled to withhold payment if the right of retention is asserted on the basis of counterclaims arising from the same contractual relationship.

(2) Except in the area of § 354a HGB (German Commercial Code), the customer may assign his claims against IMK to third parties only with IMK's prior written consent, unless IMK has no legitimate interest in the assignment prohibition.

§ 12 Provisions of the customer, free licenses

(1) If the customer provides materials (e.g. texts, graphics, images, videos, programs of third parties including *free licenses*), the use of which could conflict with the rights of third parties (e.g. copyrights and industrial property rights, right to one's own image), the customer is obligated to clarify and obtain rights in advance to the extent necessary to achieve the purpose of the contract. In particular, the customer will check before each provision of materials according to sentence 1 whether the customer has the necessary rights for their use within the framework of the contract both itself and in relation to the execution of the contract by IMK. Upon request, the customer will immediately prove to IMK the sufficient ownership of rights or the sufficient acquisition of rights.

(2) IMK is not obligated to the customer to verify the sufficient acquisition of rights by the customer.

(3) The customer shall compensate IMK for any damage resulting from claims by third parties due to the infringement of property rights and other rights, unless the customer is not responsible for such damage. The customer shall indemnify IMK against all disadvantages incurred by IMK as a result of claims by third parties due to damaging actions for which the customer is responsible.

(4) Insofar as it is expedient for the execution of the contract, IMK may copy suitable materials under a *free license* from publicly available sources on behalf of the customer and make them available to the customer. A separate authorization by the customer is not required for this. IMK will inform the customer at any time upon request which materials under a *free license* have been

used or are to be used by IMK. Paragraphs 1 to 3 apply accordingly, but only insofar and only from that point in time from which IMK has informed the customer about the use of the respective material under a *free license* and the customer has had sufficient opportunity to check the clarification of rights.

§ 13 Amendment procedure

(1) If the customer wishes to change the contractually determined scope of the services to be provided by IMK, the customer shall notify IMK of his wish for change.

(2) The originally agreed deadlines and dates shall be postponed taking into account the duration of the examination of the change request and, if applicable, the duration of the change requests to be carried out plus a reasonable start-up period, even without requiring express notification.

(3) For its part, IMK may submit proposals to the customer to change the services, the schedule and the remuneration agreed to date. The preceding paragraphs apply accordingly.

§ 14 General ancillary and cooperation obligations of the customer

(1) The customer will support IMK in the fulfillment of IMK's contractual services to a reasonable extent.

(2) In particular, the customer shall

- a) ensure the prerequisites lying in the customer's sphere of operation, insofar as this is necessary for the contractual provision of IMK's services. This includes e.g. access to the required rooms, systems and documentation as well as the availability of the relevant technical contact persons by telephone. The customer will instruct IMK in detail regarding circumstances to be observed when IMK works on the customer's premises and systems;
- b) immediately after request by IMK and without being asked, as soon as the possible relevance has become recognizable for the customer, to provide IMK with all required information and documents; this applies in particular to hardware, programs, interfaces and data stocks, as far as these objects originate from the customer's sphere of control or responsibility and can be relevant for the fulfillment of the contractual services.

(3) Unless otherwise agreed in the *individual contract*, the Customer shall provide the hardware and software infrastructure required in the Customer's sphere of operation and shall take the necessary precautions against unauthorized access to its systems from outside, loss of data and infection with and dissemination of malware (e.g. by means of anti-virus programs, firewalls, penetration tests, data backup and, in particular, appropriate back-up routines in accordance with the respective state of the art for both data and programs, fault diagnosis, regular testing of the results, emergency planning).

(4) The customer undertakes to inform IMK immediately if there is a change in the person, address, name, legal form or company.

(5) All obligations of the customer to cooperate are primary obligations. The customer shall cooperate at its own expense.

§ 15 Property rights

(1) Subject to a deviating regulation in these GTC as well as in the *individual contract*, the copyright, patent rights, trademark rights and all other industrial property rights to all objects that IMK provides or makes accessible to the customer within the scope of the contract initiation and execution are exclusively due to IMK in the relationship between the parties.

(2) Insofar as third parties are entitled to property rights to the objects or these are under a *free license*, IMK has corresponding rights of use; in this case, the respective valid license conditions apply in deviation.

(3) Subject to a deviating agreement in the *individual contract*, IMK grants the customer a simple copyright right of use to the service results provided by IMK, limited to the time specified in the *individual contract*, terminable and limited to the territory of the European Economic Area. The concrete content of the right of use results from the *individual contract*, alternatively from the purpose of the *individual contract*.

(4) The acquisition of the right of use is subject to the condition precedent of full payment of the remuneration owed.

(5) IMK is not obliged to check the performance results for conflicting industrial property rights or other intellectual property of third parties.

(6) Documents, proposals, test programs and other objects of IMK in connection with the programming, consulting and/or support services under the service contract, which are made accessible to the customer before or after conclusion of the contract, are considered intellectual property and business and trade secrets of IMK in the relationship between the parties. Unless otherwise stated in the above, they may not be used in any way whatsoever without the written permission of IMK and must be kept secret in accordance with Section I. § 22 ("Confidentiality and Data Protection").

(7) Insofar as IMK has attached to these objects, in the case of software in particular also in the source code as well as on the user interface, references to its authorship, to other property rights including the property rights of third parties, to terms of use and licensing conditions as well as to safety and warning notices, liability exclusions and limitations, trademarks and logos, the customer may not remove, falsify or otherwise change these references without the consent of IMK; IMK will not refuse consent if there is an important reason for the change.

(8) IMK retains ownership and copyright of all offers and cost estimates submitted by IMK as well as drawings, illustrations, calculations, brochures, catalogs, models, tools, test or demonstration programs and other documents and aids made available to the customer. The customer may not make these items available to third parties, either as such or in terms of content, disclose them, use them himself or through third parties, or reproduce them without the express consent of IMK. At the request of IMK, the customer must return these items in full to IMK and destroy any copies made if they are no longer needed by the customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 16 Term and termination of individual contracts

(1) The start and end of the *individual contracts* are specified in the respective *individual contract*.

(2) If a minimum term is specified in the *individual contract*, the *individual contract* may be terminated for the first time by giving three months' notice to the end of the agreed minimum term. After expiry of the minimum term, the *individual contract* shall be extended by a further year in each case, provided it is not terminated within the period specified in sentence 1.

(3) If a fixed term or a fixed termination date is specified in the *individual contract*, the *individual contract* shall end when the relevant date is reached. The parties shall therefore hold discussions in good time on whether and how to extend the contract.

(4) An *individual contract* that establishes a continuing obligation on the basis of which recurring services and consideration are to be provided on an ongoing basis and that does not contain any information on the term of the contract may be terminated by giving three months' notice to the end of a calendar month.

(5) The right to terminate for good cause remains unaffected. Good cause for termination by IMK shall include in particular

- a) a breach of main contractual obligations of the *individual contract* or a material contractual obligation of the *individual contract* by the customer,
- b) if indications become apparent that give rise to objective doubts about the customer's economic performance,
- c) a not insignificant direct or indirect (e.g. also through agreements under the law of obligations, control agreements, trust agreements) change in the customer's ownership ("change of control"); it is clarified that the mere appointment of an insolvency administrator does not constitute a change of control; in any case, the customer shall notify IMK of any changes without undue delay,
- d) the unsuccessful expiry of a reasonable grace period set for payment in the event of the Customer's default in payment, or if the Customer owes payment of a current monthly remuneration, if the Customer is in default in payment of the remuneration or of a not insignificant part of the remuneration for two consecutive dates or is in default in payment of the remuneration in a period extending over more than two dates in an amount equal to the remuneration for two months,
- e) the violation of the employee protection according to § 21 of these GTC,
- f) a breach of the obligation to maintain secrecy and data protection pursuant to § 22 of these GTC or
- g) any other not insignificant breach of obligations under these GTC.

(6) Any termination of an *individual contract* must be in writing and can only be validly declared by persons authorized to represent the company.

§ 17 Material defects

(1) The delivery or service has the agreed quality, is suitable for the contractually presupposed, otherwise the usual use and has the quality usual for deliveries or services of this type.

(2) Claims for material defects are excluded in particular in the case of

- a) contractual relationships for which the law does not provide for claims based on material defects, such as service contracts;
- b) Deliveries and services of IMK for which the customer does not owe any consideration;
- c) only insignificant deviations from the agreed quality and only insignificant impairments of the usability;
- d) Impairments resulting from use outside the agreed environmental conditions, incorrect operation, modification contrary to the contract, faulty transport, faulty installation or faulty storage by the customer or an item provided by the customer or cooperation provided by the customer, insofar as IMK is not responsible for this;
- e) defects of which the customer remained unaware at the time of conclusion of the contract due to gross negligence;

- f) of a delivery or service to a territory outside the European Economic Area as well as in the case that the delivery or service is intended to be further distributed to a territory outside the European Economic Area or used there, insofar as the delivery or service violates technical standards, legal or other sovereign provisions in the territory concerned, which IMK neither knew nor should have known; IMK is not obliged to examine the specifics of foreign law.

All other statutory or contractual exclusions of claims for defects shall remain unaffected.

(3) The customer shall support IMK in the error analysis and elimination of defects by describing problems that occur in concrete terms and informing IMK comprehensively. In particular, the customer shall notify IMK of defects with a precise description of the defect symptoms. The customer must grant IMK the time and opportunity necessary to investigate the alleged defect and to remedy the defect. If the defect concerns a movable item, the customer shall, at IMK's discretion, send the defective item to IMK for inspection or keep it ready for inspection on site.

(4) The defect shall be remedied at IMK's discretion by removing the defect on site or at IMK's business premises or by delivering an item that does not have the defect. Due to a defect, at least three attempts to remedy the defect are to be accepted.

(5) The removal of the defect can be carried out temporarily until the final removal of the defect, which is to be made up within a reasonable period of time, also by IMK showing possibilities to avoid the effects of the defect in the sense of a workaround solution, as far and as long as this is reasonable for the customer.

(6) If the item is located at a place other than the place of intended use, the customer shall bear the additional expenses resulting therefrom for the examination of the defectiveness and the rectification of the defect.

(7) Insofar as a defect notified by the customer cannot be determined or IMK is not responsible for the impairment, in particular according to paragraph 2 sentence 1 lit. d), the customer shall bear IMK's costs according to the agreed or usual prices, unless the lack of defectiveness was not recognizable for the customer.

(8) In the event of defects in items manufactured or supplied by third parties that are part of IMK's delivery or service and that IMK cannot remedy for licensing or factual reasons, IMK shall, at its option, assert its claims for defects against the third party or assign them to the customer. Claims for defects in accordance with this § 17 against IMK exist in the case of assignment of the claims for defects to the customer only insofar as the judicial enforcement of the aforementioned claims against the third party of IMK was unsuccessful, without the customer being responsible for this, or is futile, for example, due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant claims for defects of the customer against IMK is suspended. IMK shall reimburse the customer for the costs of the legal dispute that are reimbursable under the cost laws, insofar as the customer and its legal representatives were entitled to consider them necessary under the circumstances and were unable to collect them from the third party.

(9) The exclusions and limitations of the customer's rights under this § 17 do not apply insofar as IMK has acted fraudulently or has assumed a guarantee for the condition of the item.

(10) The scope and amount of liability for damages and reimbursement of futile expenses due to a material defect for which IMK is responsible shall be governed by § 19 ("Liability of IMK").

§ 18 Legal defects

(1) Subject to a deviating agreement in the *individual contract*, IMK warrants that the delivery or service in the European Economic Area is not subject to any third party rights. IMK is obliged to check conflicting industrial property rights or other intellectual property of third parties only for the territory of the European Economic Area.

(2) In the event of a delivery or service to an area outside the European Economic Area as well as in the event that the delivery or service is to be further distributed to an area outside the European Economic Area as intended or is to be used there, a defect of title due to an opposing industrial property right or other intellectual property of third parties shall only exist if IMK knew or should have known of this at the time of conclusion of the contract. The customer will therefore carry out the necessary property right research himself before delivery or use abroad.

(3) In the event of defects of title, IMK warrants that, at IMK's option, IMK will

- a) modify or replace the delivery or service in such a way that the defect of title is eliminated and this does not lead to a reduction in quality, quantity or value and is otherwise reasonable for the customer, or
- b) provides the customer with the right of use by concluding a license agreement.

(4) The customer shall inform IMK immediately in writing if third parties assert property rights (e.g. copyrights, trademark rights or patent rights) to the delivery or service. The customer authorizes IMK to conduct the dispute with the third party alone. If IMK makes use of this authorization, the customer may not acknowledge the claims of the third party on his own without IMK's consent. IMK will then defend the claims of the third party. As far as the customer is responsible for the assertion of the property right infringement (e.g. as a result of a use contrary to the contract or in case of omission of property right research by the customer,

the customer indemnifies IMK from all expedient costs associated with the defense against these claims and reimburses IMK for all damages and expenses beyond this; in this case IMK is entitled to payment of an appropriate advance.

(5) The scope and amount of liability for damages and reimbursement of futile expenses due to a defect in title for which IMK is responsible shall be governed by § 19 ("Liability of IMK").

(6) § Section 17 (2) sentence 1 lit. a), b), d) and e), sentence 2 as well as (8) and (9) shall apply accordingly.

§ 19 Liability of IMK

(1) IMK's liability for damages, irrespective of the legal grounds (e.g. impossibility, delay, defective or incorrect delivery or performance, breach of contract and tort), shall be limited in accordance with this § 19 ("Liability of IMK"), insofar as the liability presupposes fault on the part of IMK.

(2) IMK's liability for simple negligence is excluded unless there is a breach of an essential contractual obligation, the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer could rely and the non-fulfillment of which endangers the achievement of the purpose of the contract (so-called "cardinal obligation"). In the event of a breach of such an essential contractual obligation, IMK's liability in the case of simple negligence is limited to damages foreseeable at the time of the conclusion of the contract and typical for the contract. However, IMK's liability for simple negligence shall be limited to the amount of the liability limits agreed in the *individual contract*.

(3) In the event of gross negligence, IMK's liability shall be limited to damages foreseeable at the time of conclusion of the contract and typical for the contract.

(4) The above exclusions and limitations of liability in paragraphs 2 and 3 shall apply, also retroactively, to the same extent to claims arising from the breach of obligations during contractual negotiations.

(5) Insofar as IMK is not itself obligated to carry out data backup measures, the damage foreseeable at the time of conclusion of the contract and typical for the contract in the event of data loss corresponds to the typical recovery expenditure. The typical recovery expenditure is measured according to the damage that would have occurred if the customer had taken reasonable backup measures based on the due diligence of a prudent businessman.

(6) Insofar as the breach of duty by IMK concerns deliveries and services which IMK provides to the customer free of charge (e.g. within the scope of a gift, loan or free of charge provision of services as well as in the case of pure favors), the liability for simple negligence is excluded as a whole. Furthermore, IMK's liability for gross negligence is excluded in this case if the customer is an entrepreneur, a legal entity under public law or a special fund under public law. As far as IMK gives technical information or acts in an advisory capacity after conclusion of the contract and this information or advice is not part of the contractually agreed scope of services owed by IMK, this is done free of charge and under exclusion of any liability for negligent false information or advice.

(7) The exclusions and limitations of liability of this § 19 ("Liability of IMK") shall apply accordingly to claims for compensation of futile expenses.

(8) The exclusions and limitations of liability of this § 19 ("Liability of IMK") apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of IMK.

(9) The exclusions and limitations of liability of this § 19 ("Liability of IMK") shall not apply to the liability of IMK due to intentional conduct, due to injury to life, body or health, in cases of fraudulent intent, in case of assumption of a guarantee or in case of claims under the Product Liability Act.

§ 20 Limitation of the customer's claims

(1) The limitation period for claims of the customer against IMK is as follows

- a) for claims arising from material defects or defects of title for repayment of the remuneration arising from withdrawal or reduction one year from submission of the effective declaration of withdrawal or reduction; the withdrawal or reduction shall only be effective if declared within the period of lit. b) for material defects or the period of lit. c) for defects of title;
- b) one year in the case of claims arising from material defects which do not involve repayment of the remuneration due to withdrawal from the contract or reduction of the purchase price;
- c) two years in the case of claims arising from defects of title which do not involve repayment of the remuneration on the basis of withdrawal or reduction; however, if the defect of title is due to an exclusive right of a third party on the basis of which the third party can demand surrender or destruction of the items provided to the customer, the statutory limitation period shall apply;
- d) two years in the case of claims for repayment of the remuneration, damages or reimbursement of futile expenses that are not based on material defects or defects of title.

(2) Subject to a deviating individual contractual provision, the statute of limitations shall commence in the cases of paragraph 1 lit. b) and c) in accordance with the statutory provisions, in particular the applicable defect liability law, in the case of paragraph 1 lit. d) from the point in time at which the customer became aware of the circumstances giving rise to the claim or should have become aware without gross negligence. The subsequent delivery or rectification does not lead to the running of a new statute of limitations or an extension of the statute of limitations, unless IMK has exceptionally declared an acknowledgement in the sense of § 212 para. 1 no. 1 BGB. The limitation period shall commence at the latest upon expiry of the maximum periods stipulated in § 199 BGB.

(3) Notwithstanding the foregoing, the statutory limitation provisions shall apply

- a) in the case of claims for damages and reimbursement of futile expenses arising from gross negligence and in the cases specified in Section 19 (9),
- b) in the case of claims due to a defect in the cases of § 438 para. 1 no. 2 BGB and § 634a para. 1 no. 2 BGB,
- c) for all claims other than those referred to in paragraph 1.

§ 21 Poaching of employees

The customer undertakes not to entice away or have enticed away IMK employees himself or by third parties or to promote or support third parties with regard to such enticement measures for a period of two years after termination of the contractual cooperation.

§ 22 Confidentiality and data protection

(1) The customer undertakes to treat the content of the *individual contracts* concluded on the basis of these GTC as well as all information and findings obtained in connection with the negotiation and execution of the contract as confidential and not to disclose them to any third party, insofar as they are recognizably subject to secrecy according to the express wish of IMK and/or according to the circumstances of the individual case, unless this should be necessary for the execution of the contract or the disclosure is required by law or has been bindingly ordered by a court or an authority. Customer shall notify IMK in advance of any compelled disclosure, to the extent lawful, and shall limit disclosure to that which is necessary. Consultants, auditors, banks or insurance companies bound to secrecy are not considered third parties. Further legal obligations to maintain secrecy remain unaffected.

(2) The Customer shall comply with the currently applicable data protection regulations. This also includes technical security measures adapted to the current state of the art (Art. 32 DSGVO) and the obligation of employees to maintain the confidentiality of personal data (Art. 28 para. 3 lit. b) DSGVO). If there is a commissioned processing (Art. 28 DSGVO) or a joint responsibility (Art. 26 DSGVO), the customer is obliged at any time upon request of IMK to conclude a data protection agreement in accordance with the requirements of the EU General Data Protection Regulation.

(3) The obligations of confidentiality under paragraph 1 and compliance with data protection obligations under paragraph 2 shall apply for an unlimited period.

(4) In case of doubt, a confidentiality agreement already concluded or to be concluded between the parties shall take precedence over this Section 22.

§ 23 Contractual penalty

In the event of a culpable breach of an obligation under § 21 ("Solicitation of Employees") or § 22 ("Confidentiality and Data Protection"), the customer undertakes to pay to IMK a contractual penalty to be determined by IMK in each individual case at its reasonable discretion and, in the event of a dispute about the appropriateness, to be reviewed by the competent court; however, for the breach of an obligation under § 22 ("Confidentiality and Data Protection"), the obligation to pay a contractual penalty shall be limited to breaches of obligation within five years after execution of the last *individual contract* concluded on the basis of these GTC. Further claims for damages are not excluded by the contractual penalty.

§ 24 No obligation to pay contractual penalties by IMK

IMK is not obligated to pay a contractual penalty to the customer for any legal reason whatsoever. This shall also and in particular apply in the event of default on the part of IMK.

II. Contractual services

§ 25 Subject of the contract

(1) Insofar as IMK provides consulting and/or support services under a service contract for the customer, including the performance of workshops, briefings and trainings, the further details, in particular regarding the scope of services, result from the *individual contract*. Such service-contractual programming, consulting and/or support services are regularly provided by IMK in particular if IMK owes the pure service according to the contractual agreements, as is the case, for example, with the cooperation in larger projects under the management of the customer.

(2) IMK shall perform the services under the service contract by suitable personnel to the agreed extent. IMK does not owe the production of a certain work or otherwise the achievement of a certain success.

(3) Subject to an express agreement to the contrary in the *individual contract*, all deliveries and services going beyond the pure service of IMK are excluded. In particular, the customer shall provide all materials related to the service (e.g. texts, graphics, images, videos, third-party programs including *free licenses*) in accordance with Item I. § 12 ("Customer's Provisions").

§ 26 Project responsibility

Insofar as IMK provides contractual services for the customer, the customer, in particular its project manager, bears the overall responsibility for the professional, timely and budgetary realization of the project.

III. Work services

§ 27 Subject of the contract

Insofar as IMK provides work services for the customer, the further details of the services, in particular the scope of services, result from the *individual contract*. Sec. II. § 25 ("Subject matter of the contract") paragraph 3 shall apply accordingly.

§ 28 Acceptance of work services

(1) The contractual conformity of the subject of performance is confirmed by the acceptance.

(2) The acceptance procedure starts after IMK has notified the customer that the goods are ready for acceptance.

(3) Acceptance shall be declared if no defects are found that prevent acceptance.

(4) The acceptance shall be made in writing. An acceptance protocol shall be drawn up.

(5) Acceptance shall be deemed to have taken place if the customer

- a) has put the subject of performance into use or passed it on to third parties, even if this violates the terms of the license, insofar as the putting into use takes place without notification of defects preventing acceptance and not merely for test purposes,
- b) within fourteen calendar days after notification of readiness for acceptance (paragraph 2) by IMK has not given notice of any defects preventing acceptance, or
- c) has not refused acceptance after completion of the object of performance within a reasonable period set by IMK, expressly naming at least one defect.

(6) At the request of IMK, the customer must accept self-contained parts of the service separately. The above paragraphs apply accordingly to the partial acceptances. If the customer is in default with a partial acceptance, IMK is entitled to refuse further services without prejudice to further rights resulting from the default.

IV. Other provisions

§ 29 Reference designation

IMK is entitled to list the customer's company and logo as well as a brief description of the project in reference lists and to publish and distribute these on the Internet, in print media, at presentations or otherwise for factual information. Any use beyond this is not permitted in the absence of a provision to the contrary.

§ 30 Notifications and declarations

(1) Subject to a deviating regulation, the text form pursuant to § 126b BGB (e.g. e-mail) is sufficient, but also required, for the effectiveness of declarations and notifications. However, declarations for which these GTC or the law expressly require this must be in writing (§ 126 BGB), whereby transmission by telecommunication is sufficient to meet the deadline if the recipient receives the original written declaration as soon as possible.

(2) An e-mail shall be deemed to originate from the other party, subject to proof to the contrary, if the e-mail contains the name and e-mail address of the sender and a reproduction of the sender's name as the conclusion of the message.

§ 31 Contact

(1) In the *individual contract*, the parties shall each name a contact person and a deputy who can make decisions or bring about decisions at short notice and provide information within the scope of the power of representation to which they are entitled under the *individual contract*. Without further specification in the *individual contract*, the power of representation of the contact persons and their respective deputies shall be limited in case of doubt to making decisions to concretize or specify the services agreed in the individual contract, to commission changes and extensions of the agreed services, to reschedule non-binding or binding dates and to provide binding information.

(2) One party shall notify the other party without undue delay of any changes in the designated contact persons and/or their deputies. Until receipt of such notification, the previously designated contact persons and/or their deputies shall be deemed authorized to make and receive declarations within the scope of their previous power of representation.

§ 32 Transfer of rights and obligations

IMK can transfer all rights and obligations from the *individual contract* to third parties at any time. The customer may object to the transfer within one month if legitimate interests of the customer are affected by the transfer, e.g. because the acquiring company is a direct competitor of the customer, does not offer the required knowledge and qualifications, or there are reasonable doubts about its economic performance.

§ 33 Final provisions

(1) These GTC as well as all *individual contracts* concluded under their inclusion shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded; mandatory provisions of the UN Convention on Contracts for the International Sale of Goods (esp. Art. 12, Art. 28 and Art. 89 et seq. CISG) shall remain unaffected.

(2) This document is available in both a German original version and an English translation. The English language translation is non-binding and serves solely as a guide to the content of the regulation. The German-language original alone is therefore decisive for the content. The German version is also authoritative in the event of contradictions and ambiguities regarding the interpretation.

(3) If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer has no general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes in connection with the *individual contracts* concluded under inclusion of these GTC is the place of business of IMK. For lawsuits of IMK against the customer, any other legal place of jurisdiction is also valid. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by the above provisions.

(4) The agreements on the place of jurisdiction pursuant to paragraph 2 shall be governed exclusively by the law of the Federal Republic of Germany.

(5) If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of performance is the place of business of IMK, unless otherwise stipulated in the above provisions or the *individual contract*.

(6) A lawsuit may only be filed after the parties have attempted to reach an out-of-court settlement. For this purpose, the parties shall agree on a neutral third party as mediator. The statute of limitations for all claims arising from the matter in dispute shall be suspended from the initiation of the settlement attempt by one party until the end of the conciliation. § Section 203 of the German Civil Code shall apply accordingly. Expedited court proceedings or the filing of an action to interrupt a statutory limitation period which cannot be extended by party agreement shall remain permissible at all times.

(7) Insofar as the *individual contract* concluded with the Customer on the basis of these General Terms and Conditions contains loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the parties would have agreed according to the economic objectives of the *individual contract* if they had known about the loophole.