

Consulting Terms and Conditions of Scheer GmbH, 06/2015 version

01 Subject matter of contract

These Consulting Terms and Conditions shall apply in addition to any service contracts, contracts for work and labour and mixed-type contracts between Scheer GmbH (SCHEER) and the Client. The services to be rendered by SCHEER are definitively described in the description of services.

Any general terms and conditions of business, which the Client may use, shall be deemed inapplicable to the relationship between SCHEER and the Client, even if SCHEER did not expressly object to them. By accepting SCHEER's services, the Client is deemed to acknowledge these Consulting Terms and Condition, and to waive application of any other general terms and conditions which conflict with them. General terms and conditions used by the Client shall be deemed binding upon the contracting parties only if SCHEER has accepted them in writing. In such cases, these Consulting Terms and Conditions shall also apply as a supplement.

02 Performance of services

02.1

SCHEER shall perform the contract services in accordance with the principles of proper professional practice and taking account of the relevant, acknowledged state of the art and technology applicable at the time this contract is made.

02.2

For purposes of rendering its services, SCHEER shall select appropriately qualified staff of Scheer Group or third parties, and shall ensure that appropriate numbers of staff members/third parties are available to ensure the timely performance of the services.

To the extent that specific staff members are designated to render the services, such specific staff member designations are based on SCHEER's state of knowledge and planning at the time it prepared its offer. If SCHEER should deem it necessary to change the staffing on the project, then SCHEER shall take care to select staff with comparable qualifications.

02.3

At its own option and taking account of the interests of the Client, SCHEER shall perform the services in accordance with the subject matter of the present contract during normal working hours, either remotely or in person at the Client's business or the agreed location.

02.4

SCHEER can assume a guaranty (i.e. strict liability irrespective of culpability) for particular features and qualities of the services under the contract only if SCHEER has expressly guaranteed those features or qualities in a

separate declaration of guaranty provided in writing to the Client. The declaration of guaranty shall be subject to the rules on liability set out in section 16 hereof.

02.5

SCHEER shall report to the Client's designated project manager about the progress of the consulting project as agreed.

If SCHEER is required to make a written presentation of the results of the services, such written presentation shall be deemed solely determinative.

02.6

SCHEER shall appoint a project manager as the contact person for the Client throughout the entire term of the project. In the event that the project manager's employment or service relationship with SCHEER should end during the term of the consulting project, SCHEER shall be entitled and obliged to appoint another project manager; in such case, SCHEER shall take care to ensure that at such time as the new project manager commences work, he or she is fully informed about the consulting project and about the then-current status thereof. The same shall apply in the event that the project manager is incapacitated for a longer time due to illness or is for other material reasons unavailable to work on the project for a longer period of time.

03 Subcontractors

SCHEER is entitled to have a third party perform all or some of the services covered by this contract. In the event a third party is engaged to do so, SCHEER as the contractual counterparty hereby warrants proper performance of its contractual obligations to the Client, and the Client shall accept the services rendered by the third party as services of SCHEER.

04 Client's duties of cooperation

All duties of cooperation owed by the Client will be deemed conditions precedent to SCHEER's proper performance of the services. If the Client fails to perform such duties and is responsible for such failures, then any detriment arising therefrom, such as additional expenses incurred by SCHEER or by the Client as well as any delays to the project, shall be borne by the Client.

04.1

The Client shall furnish SCHEER's staff with suitable working space (at which files and documentation as well as data media can be securely stored), with a sufficient number of appropriately equipped workstations (including telephones, fax machines, computer workstations, etc.), free-of-charge, during ordinary business hours.

04.2

The Client shall appoint a project manager as a contact for SCHEER for the entire term of the consulting project. In the

event that the project manager's employment or service relationship with the Client should end during the term of the consulting project, the Client shall be entitled and obliged to appoint another project manager; in such case, the Client shall take care to ensure that at such time as the new project manager commences work, he or she is fully informed about the consulting project and about the then-current status thereof. The same shall apply in the event that the project manager is incapacitated for a longer time due to illness or is for other material reasons unavailable to work on the project for a longer period of time.

04.3

The Client shall, in a timely, complete manner and free of charge, furnish to SCHEER all such resources, information and documents deemed necessary by SCHEER in order to perform the services covered by this contract. SCHEER is entitled to presume that all such resources, information and documents are complete, correct and up-to-date, except where such are obviously incomplete, incorrect or no longer up-to-date. In addition, SCHEER's staff shall in particular be granted access to the Client's IT systems (where applicable: remotely) free of charge and shall be allocated computing time, test data and data entry capacities to the extent required.

04.4

In order to assure continuity of the project work, the Client shall furnish such numbers of qualified staff as SCHEER deems necessary in order to resolve/handle substantive and organisational questions over the entire term of the project.

04.5

SCHEER hereby undertakes to coordinate its own staff and third parties, whom it has engaged, in accordance with the requirements of the project such that the contracted services are duly performed both in respect of their quality and in respect of the agreed project schedule.

The Client shall be responsible for coordinating its own staff and third parties, whom it has engaged, whose goods and services directly or indirectly relate to the project. It shall also ensure that in providing their goods and services, such staff and third parties shall cooperate with SCHEER in such a way that the work of SCHEER is not impeded.

04.6

The Client hereby assumes a duty to inspect and file formal complaints (if applicable) pursuant to § 377 of the German Commercial Code [*Handelsgesetzbuch*] in respect of all goods and services provided by SCHEER .

05 Remuneration, payments

05.1

Unless otherwise agreed, SCHEER's remuneration shall be calculated on a 'time and material' basis, at SCHEER's current, generally applicable daily (*per diem*) rates.

Amounts invoiced are in all cases quoted as net prices, to which the statutory rate of VAT shall be added.

05.2

SCHEER may invoice the Client on a monthly basis. Where services are charged on a 'time and expenses' basis, SCHEER shall document the type and hours of work performed and forward the documentation thereof together with the invoice to the Client.

05.3

Overruns of the estimate, which are less than 50% of the total estimate, shall not be deemed material within the meaning of § 650 of the German Civil Code (*Bürgerliches Gesetzbuch*).

05.4

All invoices must be paid within 14 calendar days of receipt strictly net and free of bank fees and other charges to such account as SCHEER shall designate.

05.5

The Client may exercise a right of set-off or retention only if its claim arises from the same contract and is undisputed, is ready for decision or has been adjudicated by *res judicata* court judgment.

The Client may withhold payments for defects only to the extent reasonable in light of the specific defect, and only where the existence of such defect is undisputed.

05.6

Without prejudice to SCHEER's other and further rights, in the event that the Client is in default of payment, SCHEER shall be entitled to discontinue or withhold performance of further services until the Client makes payment. In addition, SCHEER may, at its discretion, make the performance of services then outstanding dependant on the Client's full, advance payment of the next instalment in each case or on the provision of security, in the form of a directly enforceable bank guarantee upon first demand from a major European bank equal to the amount of remuneration still outstanding. Claims of SCHEER beyond the foregoing shall remain unaffected thereby.

05.7

SCHEER is deemed to retain all rights and title to the services until such time as the amounts of remuneration owing have been fully paid, taking account of the amounts of any well-founded retentions for defects pursuant to section 14.2 (second sentence).

05.8

The Client may not assign its rights under this contract to third parties except with SCHEER's prior written consent.

05.9

The Client shall, upon its own initiative, comply with all applicable import and export rules and regulations (in particular those of the United States) relating to the goods or services. With respect to any goods or services delivered across international borders, the Client shall bear all applicable customs duties, charges and other taxes. The Client shall, upon its own responsibility, handle all statutory or administrative proceedings in connection with cross-border deliveries of goods or services, unless expressly agreed otherwise. The Client shall indemnify and hold SCHEER harmless against any and all third party claims based on any breach of the foregoing provisions where the Client bears responsibility for the breach.

06 Disruptions to proper performance of services / *force majeure*

06.1

If any event occurs for which SCHEER is not responsible, including events of *force majeure* and situations which are the equivalent thereof (e.g., strikes, strikes at third-party entities, lock outs, administrative orders, general disruptions of telecommunications networks, etc.), which prevents SCHEER from adhering to the schedule ("Disruption"), then deadlines shall be deemed extended by a time equal to the duration of the Disruption, including a reasonable start-up phase (where necessary). The contracting parties shall notify one another without undue delay regarding the causes of any Disruption arising within their sphere and as to the duration of any extension of time.

06.2

If any Disruption gives rise to additional expense or losses, SCHEER may also request compensation for its additional expense and demand compensatory damages, except where the Client likewise bears no responsibility for the Disruption.

07 Duty of loyalty and good faith (*Treuepflicht*)

The contracting parties each hereby give one another a mutual undertaking of good faith. They shall each refrain from poaching staff of the other party hereto or from taking any indirect or direct action of any kind whatsoever which might be deemed encouragement to staff of the other party to leave that party's service. This mutual duty of good faith shall continue for a two-year period following completion of the project.

08 Confidentiality

The contracting parties shall treat as confidential any and all information or information materials, to which they become directly or indirectly privy through oral, written or some other form of disclosure during the course of the contractual relationship or which are designated as confidential or which by their very nature would ordinarily be deemed to be confidential, and they agree as a rule to use such information and information materials only in

accordance with the services covered by this contract. The contracting parties are permitted to disclose the information to their own staff members or staff members of affiliated enterprises, who require access to such information for business reasons.

This confidentiality covenant will not apply to information and information materials,

- (a) which are already obvious at the time they become known (i.e., readily accessible by any third persons);
- (b) which are lawfully made available to a contracting party by a third person after they become known, and such third person is not bound by any confidentiality obligation to the other contracting party;
- (c) which must be disclosed to a government agency or some other authorised third party at their demand;
- (d) which need to be disclosed to legal or tax advisors of the respective contracting party for purposes of providing advice.

In the cases described in sub-paragraphs (c) and (d), the contracting parties shall inform each other without undue delay before disclosing the protected information.

The contracting parties shall impose an equivalent confidentiality agreement in writing upon all staff members or third parties, whom they engage in order to perform the services covered by this contract.

The contracting parties are aware that the communication between the parties will also to a large extent be carried out in unencrypted electronic form (e.g., e-mail), and they therefore waive their rights to enforce any claims which are based on the fact that unauthorised third parties gained illegal access to the electronic communication media and thereby gained knowledge about the aforementioned unencrypted electronic data.

09 Change Requests

The contracting parties are entitled during the course of the project to submit change requests with regard to the content and scope of the service. To this end, the following change request procedure will apply.

09.1

The expense for reviewing change requests will be compensated according to the then current *per diem* rates on the basis of the relevant skill sets, to the extent such review work exceeds four hours.

09.2

Following the review, SCHEER shall either inform the Client that the change request cannot be carried out by SCHEER within the framework of the agreed services or provide a written offer to carry out the changes (change offer). The change offer will include above all the changes to the service description and their impact on the period of

service, the scheduled dates and the remuneration. The offer will also explicitly include possible savings by lowering expenses.

09.3

The contracting parties may agree that services affected by a change request will be interrupted until the review ends or – to the extent a change offer is made – the binding period of the offer expires.

09.4

If no interruption is agreed, then the work will be continued on the basis of the previous contractual agreements until the change offer is accepted. The service periods will be extended by the amount of time (calculated in terms of calendar days) in which the work connected with the change request or review was interrupted. SCHEER may demand reasonable compensation for the period of the interruption – except to the extent that it is able to otherwise deploy its staff members, who are impacted by the interruption, or it has failed to do so in bad faith.

09.5

If SCHEER wishes to offer change requests to the Client, the aforementioned will apply with the exception of subsection 09.1.

09.6

Change requests must always be directed to the project manager of the respective other contracting party.

10 Rights of use

10.1

SCHEER grants the Client the non-exclusive, perpetual, irrevocable and non-assignable right to use the physical results or service deliverables [*Arbeitsergebnisse*], which are generated during the course of the contract, for its own internal purposes. Any other uses require the express written consent of the contracting party.

10.2

If and to the extent that new (co-)copyrights or other new intellectual property rights to the work product are created, then all rights to exploit, publish, edit and reproduce shall inure to SCHEER in accordance with this section 10. The same applies without exception to the extent SCHEER contributes its own methods, results, resources/tools, programs/software or similarly protectable know-how, with respect to all industrial property rights related thereto which already exist for SCHEER.

11 Inspection and formal acceptance (*Abnahme*)

Deliverables, i.e. work results of a contract for work and labour [*Werkleistungen*], will be formally accepted in accordance with the following terms and conditions:

11.1

If no formal acceptance deadlines are stipulated in the contract, then the Client will be entitled to a reasonable period of time for inspecting the contractual deliverables (which should generally not exceed two weeks) after SCHEER has delivered the deliverables subject to acceptance. Within this inspection/formal acceptance period, the Client shall use jointly defined testing criteria (e.g. test data, test cases) to review whether the deliverables conform to the terms of the contract. Any defects shall be communicated to SCHEER in the form of a defect list including a specific and structured description.

11.2

Notified defects will be classified by the contracting parties into one of the following categories:

- (a) Category 1: The contractual deliverable contains a defect which makes it impossible to use or possible but only with severe restrictions.
- (b) Category 2: The contractual deliverable contains a defect which limits its usefulness, but not to the extent of a category 1 defect.
- (c) Category 3: The contractual deliverable contains a defect which only slightly limits its usefulness.

11.3

In the case of a category 1 defect, the Client may refuse to issue its statement of formal acceptance. This will also apply if there are several category 2 or category 3 defects which collectively have the effect of a category 1 defect. SCHEER shall within a reasonable period of time cure any duly reported defects with the category 1 effects in a manner that eliminates the category 1 effects. If the inspection related to the formal acceptance cannot be duly continued because of such a defect, its effects or its cure, then the inspection/formal acceptance period for the contractual work impacted thereby will be reasonably extended.

11.4

If no category 1 defect effects are present, then the deliverable may qualify for acceptance. In that case, the Client shall declare its formal acceptance without undue delay following the completion of any testing but no later than following the expiration of the inspection/formal acceptance period. The contractual deliverable will be deemed formally accepted – even without an express declaration from the Client and without a formal acceptance request from SCHEER,

- (a) if the Client makes use of the contractual deliverable, unless this is done for testing purposes or as part of a possible duty to mitigate damages; or
- (b) if the Client does not, within the inspection period, lodge any complaints about defects, which would hinder the formal acceptance; or

- (c) if the tests are able to be carried out using the testing criteria and do not yield any defects, which would hinder the formal acceptance; or
- (d) if the Client otherwise implies through its conduct that it recognises the deliverable as substantially in conformity with the contract.

12 Material defects

12.1

If a certain property or usefulness is agreed in the service description, then any discrepancies that are insignificant and tolerable will not constitute a defect.

12.2

A claim based on a defect is specifically excluded:

- due to the accuracy of information from the manufacturer regarding the reliability or effectiveness of a data processing system or software, which had been recommended by SCHEER;
- due to business risks such as those based on decisions, whether reached or omitted, on issues lying within the business owner's discretion, such as assessing the market situation or misjudging the expediency of certain business measures;
- where there has been excessive or improper use;
- where there have been software failures which cannot be reproduced or otherwise verified by the Client;
- where there have been damages, which arise due to special influences which were not expected under this contract.

12.3

Otherwise, section 16 below will govern claims for compensatory damages and expense reimbursement.

13 Defects in title

13.1

SCHEER will be liable for the infringement of third party rights caused by its service, but only if and to the extent that the service results and/or deliverables are used in a contractually conforming manner and specifically in an environment of use which had been contractually stipulated. Subsection 12.1 applies *mutatis mutandis*.

13.2

Where there is performance impossibility [*Unmöglichkeit*] or in cases of a warranty against defects in title, the following provision will take precedence over the rule prescribed in section 14:

If a third party asserts against the Client that service results and/or deliverables performed by SCHEER infringe its rights, the Client shall without undue delay inform SCHEER thereof in writing. If service results and/or deliverables performed by SCHEER infringe third party rights, then SCHEER shall, in its own discretion and upon reasonable consideration of the Client's interests, procure the right to use the service results and/or deliverables for

the Client or restructure the service to avoid the infringement of rights.

If SCHEER is unable to achieve any other remedy at a reasonable expense, then it shall take back the service results and/or deliverables and refund the remuneration, which the Client paid for it, less a reasonable indemnity for the use. This section hereby exhaustively describes the Client's rights based on defects in title.

13.3

The Client shall support SCHEER, at the latter's request, in defending against any claims pursuant to subsection 13.2. The expenditures and costs incurred by the Client in this regard will be reimbursed by SCHEER. Each party shall bear the costs of its own personnel in terms of time spent.

13.4

The Client's claims based on defects in title shall be barred by prescription pursuant to subsection 14.5.

13.5

Section 16 shall apply to supplement the rule regarding the aforementioned Client claims.

14 Warranty/rights concerning defects

14.1

If SCHEER performs the services under this Contract in a flawed manner or in a manner that breaches the contract, then SCHEER will be obligated to perform such services for the Client in a non-flawed manner or in a manner that conforms to the contract and to do so within a reasonable period of time and at no additional cost. The availability of a workaround solution will likewise serve as a suitable means for curing the flaw.

A prerequisite here is a written complaint, which contains a reasonable grace period set by the Client and which must be made without undue delay but in any case no later than two weeks after the Client learns of the problem. In this respect, the Client must, to the extent of its abilities, prove that the flaw notified in the complaint is based on a defect [*Leistungsstörung*] that occurred within the ambit of responsibility of SCHEER.

14.2

If a contractually conforming and non-flawed performance of the services covered under this Contract cannot be finally and successfully consummated even within an additional reasonable grace period due to reasons that are attributable to SCHEER's responsibility, then in cases involving deliverables performed under a contract for work and labour [*Werkvertrag*], the statutory warranty rights will apply, except for the right to self-help. In cases involving services performed under a service contract [*Dienstvertrag*], the Client will have the right to reduce the compensation accordingly in order to reflect the defective element of the service results which it cannot use and in which it has no interest.

The Client will have no other, more extensive claims based on defects/performance irregularities. This exclusion does not apply where there has been an intentional act or omission [*Vorsatz*] or gross negligence [*grobe Fahrlässigkeit*], fraudulent concealment of a defect, and where there has been a death, physical injury or impairment to health.

14.3

If, based on a non-conforming service rendered by SCHEER, the Client can rescind the contract and/or demand compensatory damages in lieu of performance or can allege the same, then the Client shall, upon request of SCHEER, state within a reasonable grace period whether it will enforce such rights or continue to request the performance of the service (according to § 350 BGB).

14.4

To the extent required, the Client shall, free of charge, support SCHEER on any follow-up rectification work [*Nachbearbeitung*]. Specifically, the Client must report the notified performance irregularity in writing and must provide sufficiently detailed information which is helpful in identifying the irregularity.

14.5

The Client's rights arising from defects will lapse as soon as the Client modifies the service result or interferes in the service result, unless the Client can prove that this modification or this interference was not the cause of the defect.

Otherwise, the rights based on defects will expire 12 months after the performance of the service impacted by the defect (service results) or after the service has been formally accepted, either in whole or in part (deliverables). The statutory deadlines for enforcing the recourse claim under § 478 BGB will remain unaffected thereby. The same applies if the law prescribes a longer deadline period in the event of intentional or grossly negligent breach of an obligation by SCHEER, in the event of a fraudulent concealment of a defect, or in cases involving death, physical injury or impairment of health.

14.6

With respect to the Client's claims under this section 14, section 16 will also apply as a supplement.

14.7

SCHEER may demand compensation of its expense on the basis of its current *per diem* rates (as amended from time to time), to the extent that

- (a) SCHEER engages in work based on a report even though no defect is in fact present, unless the Client would have been unable to recognize that no defect exists without incurring an unreasonable expense; or

- (b) a reported disruption cannot be reproduced or otherwise verified as a defect by the Client.

15 Performance delay (*Verzug*)

In the event of a culpable delay in the service (performance delay), the Client may, beginning in the third week of the performance delay and upon evidence of a relevant loss, claim compensation for any damages and expenses. For each complete week of the performance delay thereafter, this claim will be limited to 0.5% of the net price for that portion of the service, which cannot be used because of the delay. The liability for the performance delay is limited in total to no more than 5% of this price. These limitations do not apply to the extent that the performance delay is based on gross negligence or intentional acts or omissions on the part of SCHEER. Any other Client claims, which are based on a delay in the service, are excluded.

16 Liability

The following provisions apply only where there has been simple negligence [*einfache Fahrlässigkeit*] on the part of SCHEER and only if the law has not mandated unlimited liability.

16.1

SCHEER will be liable only to the extent that it has breached a material contractual duty (a so-called "cardinal duty"). Cardinal duties are contractual duties, the fulfilment of which is absolutely needed to ensure the orderly performance of the contract and the adherence to which the Client ordinarily relies upon or could be reasonably expected to rely upon. The liability for any property damages or pecuniary losses will be limited to those damages considered foreseeable and typical for the specific contract. The liability as a whole will be limited to the value of the total net compensation. On matters involving ongoing compensation, the liability per year will be limited to the total net compensation incurred in the relevant year in which the damage arose. Subsection 14.5 will apply *mutatis mutandis* with respect to the prescription period. Liability for lost profits and unrealized savings as well as liability for any consequential damages is excluded.

16.2

In the event data is lost, SCHEER will be liable only for those expenses which are required in order to reconstruct the data that had been competently backed-up by the Client. Furthermore, this liability will apply only if the Client performed a competent data backup immediately prior to the actions that led to the loss of data.

16.3

Subsections 16.1 through 16.6 shall apply *mutatis mutandis* to any expense reimbursement claims and other liability claims held by the Client against SCHEER.

17 Termination

17.1

If the Client is late in accepting the service offered by SCHEER or if it does not cooperate in accordance with the terms of the contract, then SCHEER will be entitled to terminate the contract after setting a reasonable grace period. SCHEER will retain its right to claim compensation for the additional costs or damages caused by the Client's performance delay or its failure to cooperate in accordance with the terms of the contract.

17.2

In the event the Client is unable, for commercial reasons, to perform the duties it owes to SCHEER, SCHEER may end any exchange contracts [*Austauschverträge*] through rescission, and may end continuing contractual relationships through termination without prior notice also where the Client has filed a petition for insolvency. § 321 BGB and § 112 of the German Insolvency Regulation [*Insolvenzordnung*] will remain unaffected thereby. The Client shall inform SCHEER in writing about any threatening insolvency (its inability to pay debts as they fall due) as early as possible.

17.3

The right of both contracting parties to effect an extraordinary termination of a contract without notice [*außerordentliche, fristlose Kündigung eines Vertrages*] remains unaffected.

18 Final provisions

18.1

Should any provisions of this Consulting Terms and Conditions be or become unenforceable or void either in whole or in part, or should the Consulting Terms and Conditions contain any gaps or omissions, then the enforceability of the Consulting Terms and Conditions will not otherwise be affected thereby. The contracting parties agree instead to replace the unenforceable or void provision with an enforceable provision, which will be deemed to have been agreed upon from the outset and which reflects the meaning and purpose of the unenforceable or void provision. In the case of gaps or omissions, the contracting parties will be deemed to have agreed to a provision, which corresponds to that which - based on the meaning and purpose of these Consulting Terms and Conditions - would have been reasonably agreed from the outset, had the contracting parties considered the matter from the outset.

18.2

The contract and any legal relationships between the contracting parties based thereon shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of all provisions under German private international law (conflicts of law). The application of the laws of a third party country, including that country's rules on conflicts of law, as well as the application of the UN

Sales Convention and the case law construing it, are expressly excluded.

18.3

The judicial forum for any registered merchant, legal entity under public law [*juristischen Person des öffentlichen Rechts*], and any special fund under public law [*öffentlich-rechtlichen Sondervermögen*] shall be the city of Saarbrücken. SCHEER may choose the Client's registered place of business to serve as a judicial forum.

18.4

Any modifications and addenda to a contract must be made in writing.