



## General Terms and Conditions

English version. For information purposes only.

Please note that only the German version of these General Terms and Conditions is legally valid. This document is a translation made in good faith to the translator's best knowledge.

### 1. Scope

- 1.1. These General Terms and Conditions apply to products and services provided by HCD Consulting AG, Allmendstrasse 2, 8105 Regensdorf, Switzerland (hereinafter **HCD Consulting**) to businesses (**the customer**).
- 1.2. Contracts concerning products and services provided by HCD Consulting are entered into exclusively on the basis of these General Terms and Conditions. HCD Consulting will not recognise customer conditions which run contrary to or deviate from these General Terms and Conditions, unless HCD Consulting has provided its express written agreement regarding their applicability. These General Terms and Conditions also apply if HCD Consulting provides its products and services without reservation, despite knowledge of customer conditions which run contrary to or deviate from these General Terms and Conditions.
- 1.3. For the sale of products from certain manufacturers, special **end customer conditions** from the relevant manufacturer regarding licensing and terms of use take precedence over these General Terms and Conditions. The end customer conditions of the relevant manufacturer will be provided to the customer upon request.

### 2. Formation of the contract

- 2.1. Electronic, written or verbal quotes from HCD Consulting are, in principle, subject to change and do not represent a quote. Instead, they should be understood as merely a request to the customer to place an order. The customer is bound by its order two weeks after receipt by HCD Consulting.
- 2.2. A contract is only entered into once HCD Consulting has issued written confirmation of the order, at the latest, however, with acceptance of the delivery by the customer.
- 2.3. Quotes and order confirmations from HCD Consulting are always subject to a positive check of the customer's creditworthiness and subject to correct and punctual delivery of goods by the manufacturer.
- 2.4. All contractual services are not for use in military, nuclear or other safety-critical areas. Use in such areas requires prior written agreement from HCD Consulting.



### **3. Export controls**

- 3.1. Any export activities are the responsibility of the customer. In particular, the customer assures HCD Consulting that it will not make deliveries to sanctioned persons or companies, in line with the Federal Act on the Implementation of International Sanctions (Embargo Act, EmbG, SR 946.231).

### **4. Services and products**

- 4.1. In as far as nothing else has been agreed in writing, the content and scope of the service ensue from the order confirmation. HCD Consulting reserves the right to make product and price changes, especially as a consequence of development, as long as the agreed performance data are achieved.
- 4.2. HCD Consulting is authorised to deliver program, installation and product documentation and other documentation in English – should this not be available in the German language.
- 4.3. If not otherwise stated in the written information provided by HCD Consulting, the delivery is agreed to come from the logistics centre in Regensdorf or Ellwangen, the distributor or directly from the manufacturer.
- 4.4. The delivery period depends upon the prior clarification of all technical questions. A delivery period specified by HCD Consulting starts with the issue date of the relevant confirmation document, but not before the provision of documents, permissions and approvals to be procured by the customer, as well as receipt of an agreed down payment. The delivery period has been adhered to if the products have left the warehouse by the end of the delivery period, or if the goods have been declared ready for dispatch. Delivery delays which are due to the manufacturer are not a justification for a delay by HCD Consulting.
- 4.5. The delivery of the product will be made to the address specified by the customer. As far as not otherwise stated in the quote, the appropriate type of shipping and the transport company will be determined at the discretion of HCD Consulting. Deliveries are generally made using UPS or DHL. Services will be provided from the HCD Consulting premises, or on-site at the customer, depending on the agreement in the order confirmation.
- 4.6. Partial deliveries are permissible.
- 4.7. If the customer is in default of acceptance or culpably violates other obligations to cooperate, HCD Consulting is entitled to demand compensation for losses incurred, including any extra expenses (e.g. for storage of the products). Further rights and claims shall remain unaffected.
- 4.8. The risk of accidental destruction, accidental damage or accidental loss shall pass over to the customer when the goods are transferred to the transport forwarding company.

### **5. Prices and payment**

- 5.1. The price stated in the HCD Consulting order confirmation applies. If the customer does not accept this price, it must inform HCD Consulting immediately. Otherwise, in as far as nothing



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- else has been agreed in writing, the price stated in the HCD Consulting price list on the day of acknowledgement of the order applies.
- 5.2. Prices are net ex-works, plus statutory VAT and costs for transport and packaging. Insurance costs shall be borne by the customer.
  - 5.3. HCD Consulting reserves the right to increase prices appropriately if costs increase after conclusion of the contract – in particular due to wage settlements, raw material price increases, exchange rate fluctuations, or an increase in inflation as per the Producer and Import Price Index, Producer Price Index (PPI, at the date of the most recent price list). HCD Consulting will provide evidence of this to the customer upon request.
  - 5.4. In as far as nothing else has been agreed, invoices are due for payment in full immediately upon receipt. If the customer exceeds the agreed payment period, HCD Consulting is entitled to demand – without prejudice to other rights – interest on arrears at the statutory rate. In this case of late payment by the customer, all outstanding debts become due for payment immediately.
  - 5.5. The customer can only offset debts if its counterclaim has been legally established or is undisputed, and if the counterclaim is based upon the same contractual relationship.
  - 5.6. HCD Consulting is entitled to assign its remuneration claims to third parties for debt collection and security provision, or within the Group companies (HCD Consulting GmbH, Green IT Solutions GmbH, PromoData GmbH). The customer bears all charges payable for default, as well as the debt collection costs and reasonable legal fees.
  - 5.7. If, after entering into the contract, the customer's financial situation significantly deteriorates – with the appearance that HCD Consulting's remuneration entitlement is at risk – or if HCD Consulting only learns of such a deterioration after entering into the contract, HCD Consulting is entitled to refuse to perform the contractually agreed services until the relevant payment has been made, or security has been provided in form of an advance payment.

## **6. Reservation of proprietary rights / retention of title**

- 6.1. In as far as transfer of proprietary rights has been contractually agreed, HCD Consulting reserves ownership and the granting of other contractually agreed rights until full payment has been received. Until full payment has been received, HCD Consulting only grants the rights on a temporary basis and is entitled to rescind them. Both parties agree that, at any time, HCD Consulting has the right to register a reservation of proprietary rights for the goods in the Title Retention Register. The customer is obliged to provide the necessary signatures and agreements.
- 6.2. The customer must treat the products with care. In particular, it is obliged to insure them sufficiently against fire damage, water damage and theft, at its own expense.
- 6.3. When a customer purchases products, the products supplied by HCD Consulting may only be resold under reservation of proprietary rights. The customer already relinquishes its purchase price claim from any future sale to HCD Consulting now, by way of security. Upon request, the customer is obliged to confirm this act of transfer to HCD Consulting in writing. The customer is authorised to collect the claims that have been assigned to HCD Consulting,



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but not to otherwise dispose of said claims. (e.g. via pledging, transfer by way of security). This authorisation can be revoked at any time.

- 6.4. In the case of seizure, or any other impairment of HCD Consulting's rights by third parties – in particular access to goods subject to reservation of proprietary rights, the customer is obliged to notify the third parties of HCD Consulting's rights and to inform HCD Consulting delay. Disadvantages, costs and damages resulting from a failure to fulfil this obligation shall be borne by the customer.
- 6.5. Any treatment, processing, or remodelling of goods subject to reservation of proprietary rights will be performed on behalf of HCD Consulting. If the customer becomes the sole owner of the new item, the customer shall grant HCD Consulting proportional co-ownership. The customer shall keep this for HCD Consulting free of charge.
- 6.6. If the value of the securities given to HCD Consulting exceeds its claims by more than 20 %, a corresponding proportion of the securities will be released at the request of the customer.

## **7. Inspection of the products**

- 7.1. The customer is obliged to inspect the products without delay and with due care regarding discrepancies in quality and quantity, and to inform HCD Consulting about obvious defects within 5 working days after receiving the goods. Timely submission of the notice of defects is sufficient for adhering to the deadline. This applies correspondingly for hidden defects which are discovered later. If this obligation to inspect and report defects is not complied with, assertion of any warranty claims later on shall be excluded. Hidden defects shall remain unaffected by this.
- 7.2. In addition, any transport damage or incorrect quantities recognisable upon delivery shall be noted on the freight forwarder's receipt and reported immediately.

## **8. Material warranties for products**

- 8.1. A prerequisite for the assertion of warranty claims by the customer when purchasing products is that the customer has properly fulfilled its obligation to inspect the goods and report any defects.
- 8.2. If there is a defect and a manufacturer's guarantee from the end customer conditions exists, before asserting any claims against HCD Consulting, the customer is obliged to assert its claims via the manufacturer's warranty vis-a-vis the manufacturer. HCD Consulting will support the customer with this. Otherwise, the product liability claims of the customer remain unaffected.
- 8.3. If the delivered goods are defective, in the context of statutory regulations the customer shall be entitled to demand supplementary performance in the form of rectification of the defect or delivery of a defect-free product. HCD Consulting will make the decision regarding the type of supplementary performance to be offered. If the supplementary performance fails, the customer has the right to a price reduction or to withdraw from the contract.



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## 9. Legal warranty

- 9.1. HCD Consulting guarantees that there are no infringements of intellectual property rights (known about by HCD Consulting) which would result in the customer being exposed to claims from third parties. HCD Consulting's liability is limited to the purchase price of the goods.
- 9.2. For products with end customer conditions, the legal warranty is exclusively according to the manufacturer's conditions.

## 10. Exclusion of additional warranties

- 10.1. HCD Consulting offers no warranties beyond those described in sections 8 and 9. In particular, there is no guarantee services will be provided beyond the extent of due diligence.

## 11. Services

- 11.1. HCD Consulting provides services with the greatest possible care and conscientiousness, in line with the relevant level of established technology, using qualified employees. In agreement with and at the express request of the customer, HCD Consulting will take into account the customer's specific regulations, methods and practices – as far as it makes sense to do so in the individual case.
- 11.2. The customer undertakes the commitment to support HCD Consulting's services with appropriate cooperation. In particular, the customer will provide HCD Consulting with the necessary information, data, access and passwords promptly – as well as enabling HCD Consulting employees to enter the customer's premises to the extent required during normal office hours. Furthermore, as far as is required, the customer will provide the necessary equipment in sufficient quantity at its premises.
- 11.3. As far as it is necessary for the specific project, the customer will provide HCD Consulting with a contact partner and a substitute contact partner, as a permanent contact for all issues pertaining to the project. The contact person is empowered to take all the decisions concerning the project either by themselves, or to bring them about promptly. Furthermore, the customer will ensure the employees whose special knowledge is required to implement the relevant project are available.
- 11.4. If the customer does not fulfil its obligation to cooperate and, for this reason, HCD Consulting is unable to provide its services either completely or partially within the agreed time period, the time period shall be extended appropriately for an agreed duration, for this purpose, taking the availability of HCD Consulting into account.

## 12. Liability and force majeure

- 12.1. HCD Consulting shall be subject to unlimited liability in the case of intent, gross negligence, or for cases of mandatory statutory liability, as for damage to life, limb or health, or for liability under the Product Liability Act (*Produkthaftungsgesetz*).



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- 12.2. In all other cases, regardless of the legal reason, the liability of HCD Consulting for ordinary negligence concerning direct and immediate predictable damages is limited to the value of the individual service provided by HCD Consulting at the most.
- 12.3. The liability of HCD Consulting is excluded for indirect or consequential damages, in particular for consequential damages due to defects, lost profits, data loss, data protection infringements – as well as all other damages, regardless of the legal reason and for auxiliary persons.
- 12.4. In the case of force majeure (especially, but not excluding, war, riot, sabotage, industrial action, fire, flooding and other meteorological disturbances, natural disasters, epidemics and pandemics, official measures, legislative measures, black-outs etc.) and only insofar as HCD Consulting and/or its agents are not culpable for causing the damage/disturbance, the service obligations on HCD Consulting and, in particular, the associated claims for damages or payment of contractual penalties, shall not apply.
- 12.5. The rules set out above also apply in favour of agents and employees of HCD Consulting.

## 13. Use of customer name and logo

The customer grants HCD Consulting AG a non-exclusive, free of charge and revocable right to use the customer's name and logo on the company's own website, on the company's own social media channels and in marketing material for reference or advertising purposes (subject to any brand guidelines provided by the customer).

## 14. Limitation period and forfeiture

- 14.1. The statutory periods for limitation and forfeiture apply.
- 14.2. All claims from purchase contracts shall remain unaffected, and will expire within one year after handover.

## 15. Intellectual property rights / copyrights

- 15.1. Intellectual property rights and/or manufacturers' and/or licensors' copyrights generally apply to the products (incl. circuit diagrams, drawings, sketches, descriptions and similar documentation, as well as software), exclusively according to the manufacturer's **end customer conditions**. Notices regarding such intellectual property rights on or in the products may not be altered, covered or removed by the customer.
- 15.2. At the moment the remuneration due is paid, HCD Consulting grants the customer a non-exclusive, global (excluding countries subject to sanctions), right to use the work resulting from the services – the contents of which are restricted according to the provisions laid out in these General Terms and Conditions. The use is authorised in the scope necessary to fulfil the contractually intended purpose within the customer's business operation. Disclosure to third parties is excluded.  
**"Work results"** are all pieces of work created in the context of HCD Consulting's provision of services: especially documents, project sketches, plans, concepts, presentations and designs.



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## 16. Confidentiality and data protection

- 16.1. The contract partners are obliged to keep confidential all information – which becomes known to them during the preparation and implementation of their business relationship – which is not generally known and in which the other contracting party has an interest in maintaining confidentiality (in particular, operational and commercial secrets and personal data), also for the period after the business relationship has finished. The contract partners will ensure that their employees and other agents or subcontractors also uphold the duty of confidentiality. Legal notification and disclosure requirements shall remain unaffected, as shall the necessary and/or appropriate use of information to provide the services/deliveries.
- 16.2. Personal data may only be processed in as far as it is permissible according to the relevant applicable data protection legislation (in particular, the Swiss Federal Law on Data Protection of 25 September 2020 (DSG, SR 235.1) and its executive regulations). The parties shall familiarise their employees with the relevant data protection provisions or have already done so. The customer is obliged to ensure that, as an appointee of the customer, HCD Consulting has permission to process the personal data supplied by the customer. In addition, both parties shall complete the accompanying data processing agreement, in as far as the customer provides HCD Consulting with regular access to its personal data. In this case, each party shall provide a contact person for data protection issues.

## 17. Credit checks

HCD Consulting reserves the right to work with credit agencies and credit insurance companies. HCD Consulting shall provide the addresses of these companies to the customer upon request. These companies may be sent data upon application, acceptance and termination of the contract, and may provide HCD Consulting with information about the customer. HCD Consulting may also report data to the companies due to failure to meet contractual obligations. The companies store this data to be able to give their associated businesses information to evaluate customers' creditworthiness, or to provide a customer's address for the purposes of locating a debtor.

## 18. No poaching of staff

For the duration of the cooperation between the contracting parties – and for a period of one year afterwards – the customer is obliged not to actively head-hunt HCD Consulting employees, or employees of the companies associated with it. In each case of culpable breach of this provision, the customer is obliged to pay a contractual penalty of one year's salary of the HCD Consulting employee concerned.

## 19. Final Provisions

- 19.1. The customer may only assign or transfer claims, rights and/or duties from the contractual relationship to third parties with the prior written approval of HCD Consulting.



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- 19.2. Amendments and additions to this contract must be made in writing. This also applies to amendments or additions to this clause.
- 19.3. Should one or more provisions of this contract be wholly or partially ineffective or unenforceable, the legal validity of the other provisions in this contract shall remain unaffected. Instead of this ineffective or unenforceable provision, it is agreed to apply a provision which, legally and factually, most closely approximates the commercial purpose of the ineffective or unenforceable provision. In the case that a gap arises from the contract which cannot be closed by interpretation of the remaining provisions, it is agreed to close such a regulatory gap with a provision which most closely approximates the commercial interests of the contracting parties – should they have been aware of the need for the regulation of this point when originally drawing up the contract.
- 19.4. Swiss law applies to the business relationships between HCD Consulting and its customers, excluding application of international private law (IPRG, SR 291.0), the UN Sales Convention and other multilateral conflict-of-law rules.
- 19.5. The exclusive legal venue for all disputes arising from business relationships between contract partners shall be the company headquarters of HCD Consulting.

14 October 2024