

## General Terms and Conditions of Deleproject AG – Issue 2020

### 1 General

1.1 These terms and conditions shall apply to all goods and services provided by Deleproject AG (hereinafter referred to as "Deleproject"). The placement of an order for supplies and services indicates the customer's acceptance of these terms and conditions. Any general business, purchasing, or other contractual conditions of the customer are valid only if expressly accepted in writing by Deleproject. These terms and conditions apply in addition to other contractual agreements made with the customer concerning the nature, scope and duration of the services to be provided by Deleproject.

1.2 Unless otherwise stated in the bid, the customer has thirty days to accept written offers made by Deleproject.

1.3 The customer and Deleproject enter into a contractual relationship once Deleproject confirms in writing that it accepts the order (order confirmation). If Deleproject and the customer both sign a document entitled "contract", the confirmation required above is waived.

1.4 All agreements and legally relevant declarations by the parties must be in writing to be valid. This requirement may be satisfied by letters, memos, drawings, blueprints, faxes and other forms of transmission providing documentation in text or image. Amendments and additions to any contract shall be effective, however, only once legally signed by hand by the parties.

1.5 If any provision contained herein shall be invalid in whole or in part, this does not affect the validity of the remaining provisions. The parties will replace such a provision with a new provision that comes as close as possible to the meaning and purpose of the original provision.

### 2 Scope and Fulfilment of Goods and Services / Place of Fulfilment

2.1 The customer shall provide Deleproject all such information and documents necessary to allow goods and services to be provided in full, on-time and accurately. The customer shall indicate to Deleproject any particular technical conditions and local regulations applicable to fulfilling said order.

2.2 The scope and fulfilment of goods and services shall in principle be determined by that given in the order confirmation specified in §1.3 above; if no such confirmation was made, the terms in the bid shall apply. The Deleproject goods and services will be specified in the relevant documents and any appendices thereto.

2.3 The services will be rendered by Deleproject staff in a professional manner and with care, using the knowledge and skill available to Deleproject and in conformity with the customary professional standards. Deleproject is responsible for the careful selection, training, instruction, and professional work, supervision, and control of its staff. If necessary, third parties may be called upon to complete the services ordered. Such third parties are obliged to at least the same care as Deleproject's own staff.

2.4 Provided the parties have not agreed on some special place of fulfilment or the nature of the transaction requires otherwise, the place of fulfilment shall be Deleproject headquarters.

2.5 The customer agrees to provide all necessary information and to create the internal conditions necessary for the service to be provided. In particular, the customer shall provide timely notice to Deleproject of technical requirements as well as any legal, administrative and other regulations at the place of fulfilment applicable to the execution and use of the goods and services.

2.6 If services are being provided in the premises of the customer, the customer is responsible for granting Deleproject staff access to its premises, systems, computer networks, and user accounts as agreed.

### 3 Software and Expertise

3.1 The customer may use any expertise and knowledge that becomes known in the course of this transaction as well as any software, data, media, documents, and the like only to the extent agreed; likewise, the customer may not provide or otherwise make accessible such information to any third party. All rights, including copyright, remain with Deleproject or its licensors, even if the customer makes subsequent modifications. The customer may make three copies of the software for security and archiving purposes. Any additional number of copies or use for any other purpose requires the written consent of Deleproject. The customer shall apply the same proprietary notices on all modifications and copies such as were found on the originals.

### 4 Deadlines

4.1 Deadlines are only binding if expressly guaranteed by Deleproject in writing. Compliance with such deadlines requires the prior fulfilment of the customer's obligations. The deadlines shall be reasonably extended if:

- the customer fails to provide Deleproject details required to provide the goods and services in a timely, accurate or complete manner or if the customer subsequently changes such details, causing such delay; or,
- hindrances occur which Deleproject is unable to prevent despite exercising all due, ordinary care, such as significant business disruptions, accidents, labour conflicts, late or defective supply of raw materials, semi-finished or finished products, unavailability of important work pieces, government actions or bans, acts or events generally considered to have been caused by force majeure; or
- the purchaser or any third party is delayed in performing the required preparatory work, making deliveries or fulfilling its contractual obligations, especially if the customer defaults on making payment as agreed.

### 5 Transfer of Benefit and Risk

5.1 The benefit and risk of the goods and services transfer to the customer once loaded for transport; for partial deliveries, once each part is loaded for transport, regardless of who is bearing the costs of such transport and who the designated recipient is.

### 6 Inspection and Acceptance

6.1 The goods and services provided in fulfilment of any contract are to be inspected and accepted as follows, unless otherwise agreed:

6.2 If the relevant contractual conditions have been met (such as placing the goods and services into operation), Deleproject will give the customer reasonable notice for joint inspection and acceptance, a record of which shall be kept by the customer and Deleproject. Such record shall indicate whether the goods and services have been accepted. Any defects identified during the inspection are to be recorded therein.

6.3 If Deleproject fails to request inspection and acceptance as specified above, the customer has 30 days to inspect the goods and services from the time of their delivery and to provide written notice of any defects discovered immediately in writing. Acceptance shall be deemed to have been granted at the time of inspection.

6.4 Defects shall be corrected as specified in §7 below.

6.5 If the customer fails to inspect the goods and services as specified in §6.2 or §6.3 above, the goods and services are deemed to have been accepted as of their loading for transport. Deleproject assumes no liability for warranty claims for any defects that would have been discovered in the course of an inspection if the customer had conducted the same with all due care.

## **7 Warranty**

7.1 Deleproject warrants the flawless functionality of the goods and services provided.

7.2 The warranty period lasts 12 months and begins upon delivery of all material goods and upon acceptance of all other goods and services. The customer shall make warranty claims no later than ten days after discovery of the defect. Otherwise, the customer forfeits any rights to make a warranty claim.

7.3 Deleproject is required to fix any defects indicated in the customer's written warranty claim that demonstrably impair the good's functionality, using whatever measures it chooses. At its discretion, these repairs will be performed at Deleproject's premises or the customer's. Disassembly and assembly, transport, packaging, travel and accommodation expenses will be borne by the customer.

7.4 If the repair fails, the customer is entitled to a reduction in price equal to no more than 20% of that part of the goods and services affected by the defect. If such defect cannot be repaired and it is so severe that the affected part of the goods and services is no longer usable, the customer is entitled to refuse acceptance of the corresponding part.

7.5 Excluded from the warranty are any defects and disruptions beyond the control of Deleproject, such as those attributable to materials provided by the customer or to designs prescribed by the customer, natural wear and tear, inadequate maintenance, disregard of instruction manuals, improper or excessive use, inappropriate handling, unsuitable equipment, alterations by the customer or third parties, extreme environmental conditions, and the like.

7.6 The customer has the right to assert claims due to defects in the goods and services provided exclusively as provided herein.

## **8 Liability**

8.1 For damages caused by wrongful actions of Deleproject staff done out of intent or gross negligence, Deleproject assumes liability up to the amount of actual damage, but no more than the value of the contract and no more than CHF 1 million.

8.2 Liability for any and all direct and consequential damages caused by force majeure, government action and/or events beyond the control of Deleproject is hereby excluded.

8.3 Any liability for indirect damages is excluded. Neither Deleproject nor its suppliers/licensors are liable for damages of any kind (including lost profits, business interruption, loss of data or business information or other pecuniary loss) arising from the use of a program, system or service provided by Deleproject, or the inability to use such products, even if Deleproject had been advised of the possibility of such damage.

## **9 Retention of Title**

9.1 The goods provided by Deleproject remain its property until full payment is received. The customer is obliged to undertake such measures as may be necessary to protect the property of Deleproject. In particular, the customer authorises Deleproject to register or note its title on the goods at its own expense in the public registers or the like in accordance with relevant statutory provisions and to complete all formalities in this respect.

## **10 Rescission of Contract by Deleproject**

10.1 If the customer is in default of payment or the customer's circumstances have changed such that the payment for the goods and services is, in Deleproject's view, put at risk, Deleproject may at any time terminate the contract and withhold deliveries or require the return of goods already delivered. The claim for damages is expressly reserved.

## **11 Prices and Payment Terms**

11.1 The prices for the goods and services to be provided are in Swiss francs (CHF), unless otherwise agreed, without VAT, fees, duties, taxes, transport, packaging, and insurance.

11.2 An appropriate price adjustment may occur when changes are made to the scope of the order, when the information and documents provided by the customer are incomplete or do not correspond to actual conditions.

11.3 Invoices are due within 30 days from date of issue. If the customer is in default of payment, the customer shall pay without further notice a late fee on the amount arrears equal to 5% p.a.

11.4 The means of payment notwithstanding, payment shall be deemed to have been received only once the full invoice amount has been irrevocably credited to Deleproject's account.

11.5 The customer may offset invoiced amounts only if such offset has been ordered by a Swiss court.

## **12 Invoicing**

12.1 For fixed-price contracts:

Monthly billing based on work progress related to project phases and reviews or as agreed in the payment terms as defined by project milestones.

12.2 For on-demand contracts:

Monthly billing of work hours based on Deleproject engineers' working reports. The work reports will be reviewed by one or two persons designated in advance by the customer. The invoice will be broken down into:

- work hours
- expenses

## **13 Severability**

13.1 If one or more provisions of these terms and conditions or other agreements between Deleproject and the customer is void or is otherwise invalid, the remaining provisions shall continue to apply.

13.2 The parties will interpret their legal relationship in such a way that the economic purpose of the void or invalid provisions shall be met to the extent legally possible. The same applies to any gaps in the agreements made.

## **14 Jurisdiction and Applicable Law**

14.1 The exclusive place of jurisdiction is the location of Deleproject. Deleproject may however opt to assert its claims at the customer's location.

14.2 The contract is subject exclusively to substantive Swiss law. The provisions of the "Vienna Sales Convention" (CISG) and the conflict rules of the Federal Act on Private International Law are expressly excluded.

## **15 Integral Parts of these Terms and Conditions**

15.1 The following appendices form an integral part of these terms and conditions:

- Account and Expense Rates