

## General Terms and Conditions

### § 1 AREA OF VALIDITY AND CONTRACTUAL OBJECT

1. In all contractual relationships (in particular, individual contracts and service certificates), in which the HPC Aktiengesellschaft [Corporation] (hereafter referred to as "HPC") performs services for other companies, legal entities under public law or special funds under public law (hereafter referred to as the "contracting entity") – other than with the transfer and maintenance of SAP® standard software – the following terms and conditions and the respective current price and condition lists from HPC apply.

2. These terms and conditions apply exclusively. Deviating, contradictory, or supplementary conditions – especially terms and conditions from contracting entities – are only a part of the contract and are a part of the contract as far as HPC has explicitly agreed with their validity. This requirement for consent applies in every case, especially if HPC executes a contract without explicitly objecting to such conditions. As far as the parties would like to deviate from regulations in these present terms and conditions in an individual contract, this is only expressly possible in writing, referring to the affected clause in the terms and conditions.

### § 2 CONTRACT INITIATION AND CONCLUSION OF CONTRACT

1. HPC can accept offers from contracting entities within four weeks. Offers from HPC are non-binding if nothing else has been agreed upon in writing. In case of doubt, the quotation or the order confirmation from HPC is relevant for the content of the contract. HPC is not responsible for additional aspects of the services or results. In particular, the contracting entity cannot derive such an obligation from other public HPC representations or HPC advertisements other than if HPC expressly confirmed the additional condition in writing.

2. All cancellations, dunning notices, and deadlines, as well as various contractual declarations from the contracting entity, must be in written form in order to be effective.

3. Assurances of any kind that constitute greater liability for HPC than has been stipulated in these terms and conditions require the express written confirmation of HPC. Warranties require the express written confirmation of HPC management.

### § 3 CONTRACTUAL OBLIGATION

1. The cooperation requires a high degree of trust, collaboration, and willingness to reach an agreement. With the exception of urgent cases, the contracting entity's deadlines, set by law or contract, amount to a minimum time of 10 workdays.

2. If the fruitless expiration of a set deadline is to entitle the contracting entity to cancel the contract (e.g., due to withdrawal, cancellation, or compensation instead of the service) or reduce the compensation, the contracting entity must threaten these consequences for the fruitless expiration in writing, and set a deadline as well. After the expiration of a deadline set in accordance with subsection 1, HPC can request that the contracting entity exercises its rights resulting from the expiration of the deadline within two weeks of the receipt of the request.

3. If necessary, the services rendered will be settled in accordance with the present conditions, particularly § 7. § 13 applies for any claims for damages.

4. Individual contracts that have been concluded on the basis of these terms and conditions may only be canceled for an important reason, unless agreed otherwise.

### § 4 PROVISION OF SERVICES

1. The contracting entity specifies the task. The fulfillment of these tasks is jointly planned on this basis. The HPC may possibly submit a written concept for this. Further specifics may arise from the individual contract.

2. Also, as far as the services are rendered for the contracting entity, HPC alone is to issue instructions to its employees. The employees are not integrated into the contracting entity's operation. The contracting entity can only give professional specifications to the HPC project coordinator, not the individual employees.

3. The contracting entity bears the risk as to whether the services listed in the order meet its wishes and needs. In the case of doubt, it is to be consulted by HPC employees or third-party specialists in a timely manner.

4. HPC decides which employees it uses and reserves the right to replace them at any time. It may also use freelance employees and other businesses in the framework of fulfilling the order. It is responsible for the culpability of subcontractors as well as for its own culpability.

5. If the services cannot be performed for reasons not due to HPC, the time agreed upon will still be invoiced unless the contracting entity proves that the HPC employees affected could be used in some other way.

6. If HPC performs services beyond the scope of the contract with the consent of the contracting entity, the regulations and conditions of the individual contract apply as agreed upon.

### § 5 CONTRACTING ENTITY PARTICIPATION

1. The contracting entity provides for the necessary work environment required for the contractual services (hereafter: "IT systems"). It is in his area of responsibility to guarantee the correct operation of the necessary IT systems; with maintenance agreements with third parties, if necessary.

2. The contracting entity contributes to the fulfillment of the order to the extent necessary, in that it provides, for example, employees, work spaces, IT systems, data, and telecommunications systems. It grants HPC access to its software and IT systems, directly and via remote data transmission. It answers questions and checks results.

3. The contracting entity names a contact person for the HPC in writing, as well as an address and e-mail address where the contact person's reachability is guaranteed. The contact person must be in a position to make necessary decisions for the contracting entity or be able to bring them about without delay. The contact person ensures good cooperation with the HPC contact person. The employees of the contracting entity whose work is necessary are to be released from other duties to a reasonable extent.

4. The contracting entity thoroughly tests HPC's results immediately, beginning from the delivery or provision, in accordance with the commercial law requirements (§ 377 HGB [German Commercial Code]) by a specialist employee, as well as for its applicability in the concrete situation before it starts its operative use. This is also true for services that it received in the framework of the subsequent fulfillment and maintenance.

5. The contracting entity makes appropriate arrangements for the case that the results have errors (e.g. through data backup, error diagnostics, regular check of the results). For the lack of an explicit written reference, in individual cases, HPC employees can always assume that all data with which they come into contact, are secured.

6. In addition, the contracting entity performs all necessary and required participation services to carry out the contract. Individual contracts may contain additional regulations.

7. The contracting entity bears disadvantages and additional costs if it violates its duty to cooperate.

### § 6 PERFORMANCE PERIOD

1. Appointments are only binding if they are explicitly agreed as such in writing. HPC's requirement for realization only begins with the contracting entity's acceptance of the concept or functional specification.

2. Work days are week days from Monday to Friday (8 a.m. to 5 p.m. Central European Time), with the exception of public holidays in the state of Baden-Württemberg and December 24 and 31.

### **§ 7 REMUNERATION, PAYMENT, RESERVATIONS**

1. Without any other written agreement, remuneration is based on the respective valid HPC price and condition lists.

2. HPC is authorized to invoice partial services. Payments are due 14 days after creating the invoice. No discount payments are granted. HPC calculates default interest beginning 30 days after the due date. All prices are understood to be without the respectively valid value-added tax, unless the sale is exempt from value-added tax.

3. Settlement according to time budget is made, accompanied by an HPC activity report. The contracting entity can object to the specifications listed there only in writing, within two weeks.

4. Travel time, travel costs, and expenses are to be reimbursed according to expense. Travel times and costs occur on trips between the employee's office and the contracting entity's respective usage site or between various usage sites belonging to the contracting entity.

5. HPC can claim advance payment or full payments in advance if there is not yet an existing business relationship with the contracting entity, if the delivery is to take place abroad, if the contracting entity's headquarters are abroad, or if there are reasons to doubt the contracting entity's punctual payment.

6. The contracting entity may only make offsets with undisputed or legally binding claims. It cannot assign its claims to third parties, irrespective of the regulations in § 354 of HGB.

### **§ 8 CHANGE REQUEST PROCEDURE**

1. During the validity period of a project, both contractual parties may propose written changes at any time, especially with regard to the stipulated services, methods, and deadlines.

2. In case of a proposed change by the contracting entity, within ten workdays, HPC will communicate whether the change is possible and what effects it has on the contract, in particular with regard to the course of time and remuneration. The contracting entity must then inform HPC in writing within five work days if it wants to keep the changes that it proposed under these conditions or whether it wants to continue the contract under the old conditions. If the examination of a proposed change presents a significant effort, HPC can charge for the expenses required for the examination in a separate invoice.

3. In the event that HPC proposes changes, the contracting entity must respond whether it agrees with the change in writing within ten workdays.

4. If there is no agreement on the change, the work will continue in accordance with the existing contract. The contracting entity can instead require that the work is completely or partially discontinued or, in accordance with the conditions in § 3, definitively suspended.

In the event of discontinuation, beginning on the first workday, per day and per HPC employee in the project whose work has been paused, compensation in the amount of the agreed upon rate or the daily rate in accordance with that in the price and condition lists is due. In the event of final termination, the legal consequences are determined in accordance with the specifications in § 649 BGB [German Civil Code].

### **§ 9 RIGHTS OF USE**

1. With its complete payment of the remuneration agreed upon up to and including acceptance of the results achieved by HPC, the contracting entity receives a non-exclusive right to use with the purpose of processing its internal transactions and those of such businesses that are associated with it in the sense of § 15 AktG ("group companies"). Use prior to acceptance for test purposes is permitted to the extent necessary.

2. HPC retains the right to archive the results and continue to use the knowledge gained during development without further limitations, such as when developing new results based on these results as well as surrendering these new results that could be similar to the results delivered to the contracting entity to third parties.

3. The customer is authorized to generate necessary security copies of the results. Each security copy is to be indicated as such and is to be marked with the copyright notice of the original data carrier.

4. HPC reserves the ownership and the rights (§ 9) to the contractual objects up to the complete settlement of its claims from the contract. In the event of access to the privileged property by third parties, the contracting entity is to immediately notify HPC in writing and inform the third party about HPC's rights.

### **§ 10 ACCEPTANCE**

1. Insofar as the provisions of the individual contract require the acceptance of the service owed, the contracting entity will execute the acceptance. For this purpose, HPC will notify the contracting entity about the provision of the service in a timely manner.

2. If a service contract has multiple individual works that can be used independently from each other, these individual works will be accepted separately.

3. If partial works are defined in a service contract, HPC can also present partial works for acceptance. For later acceptances, the functioning of the new partial work alone and the correct cooperation between the partial works accepted earlier with the new partial work are checked.

4. If the contract contains the creation of a concept, in particular for the specification, change, or enhancement of standard software, HPC can demand a separate acceptance for the concept.

5. The contracting entity is to check the service result within 15 workdays and, in writing, either declare the acceptance or inform about the errors found with an exact description and information on the errors. Non-substantial defects do not justify the rejection of the acceptance. If the contracting entity does not make a declaration in this time period and no significant defect is present, the service is considered to be accepted. The productive usage or the productive start-up of (partial) services by the contracting entity is deemed as acceptance of the respective productively implemented service after two weeks in every case.

6. HPC will immediately check the reported defects and eliminate the defect in an appropriate period of time for the magnitude of the deficiency. After notification of the remedial action, the contracting entity is to examine the result of the service within five workdays. Otherwise, § 5 shall apply.

### **§ 11 QUALITY DEFECTS**

1. There is a quality defect if the service owed does not show the contractually agreed-upon characteristics or is not appropriate for the contractually agreed-upon use. As far as no characteristic or use was agreed upon, the warranty refers to the service being suitable for the contractually required, otherwise usual use and exhibits a characteristic that the contracting entity can expect for services of this type.

2. Defects that occur are to be documented by the contracting entity in a way that is comprehensible to HPC and HPC must be notified of them in writing, immediately after the discovery. For this reason, the contracting entity has to examine the results immediately after delivery by HPC, as far as it is feasible in accordance with the normal course of business, and if there is a defect, it is to immediately notify HPC of it. If the contracting entity omits the notification, the results are considered approved, unless it is a defect that was not detectable during the examination. If such a defect appears later, the notification must be made immediately after it is discovered. Otherwise, the results are considered approved, notwithstanding the defect. Timely sending of the notification is sufficient to retain the rights of the contracting entity.

3. In the event of proven material defects, HPC guarantees the remedying of such defects. At its own discretion, HPC will provide a new, defect-free service or will remediate the defect. As part of the corrective action, HPC may also show the contracting entity reasonable possibilities to avoid the effects of the defect.

The contracting entity must assume a new status of services if the scope of the service contract is maintained and acceptance is not unreasonable. The urgency of the error recovery depends on the degree of operational impediment. The regulations of the present conditions, § 5 in particular, apply accordingly.

4. If the remedy fails after the expiration of an appropriate deadline set by the contracting entity, the contracting entity may reduce remuneration or cancel the contract or terminate the continuing obligation. The conditions of § 3 of these terms and conditions are to be observed for the extension period. HPC provides compensation for damages or compensation for futile expenses due to a defect in accordance with the framework of the limitations set in § 13. Other rights due to material or legal defects are excluded.

5. The claims in accordance with § 1, 3, and 4 are limited to one year, beginning with the legal limitation period for claims due to the relevant material and legal defects. This also applies to claims due to withdrawal and reduction in accordance with § 4, subsection 1.

The reduction of the legal limitation period does not apply in the event of malice or gross negligence by HPC, defects which are fraudulently concealed, personal damages, or legal defects in the sense of § 438, § 1, No. 1a BGB.

6. For defects in rectification work, circumvention, or new deliveries to replace an item, the legal limitation period also ends at the point in time specified in § 5. If HPC examines the existence of a defect with the consent of the contracting entity or carries out the rectification, the legal limitation period is suspended until HPC informs the contracting entity about the results of its examination or the rectification is declared as completed or the rectification is refused. The limitation begins three months after the end of the suspension, at the earliest.

7. If HPC performs services when looking for errors or troubleshooting without being required to do so, HPC can invoice the additional cost, in accordance with § 7. This is applicable, especially if a reported defect cannot be verified or associated with HPC. In particular, the additional expense that is incurred by HPC when resolving defects because the contracting entity did not properly fulfill its obligation to cooperate or has improperly used software or work results, is to be compensated.

8. If HPC does not perform the services outside the area of material and legal deficiencies or does not perform them correctly or if HPC commits a different breach of duty, the contracting entity is to always reprimand HPC in writing and grant HPC a grace period in which HPC is given the opportunity to correctly fulfill the services or find a remedy in some other way. § 3 applies. The limits set in § 13 apply for damages or reimbursement for futile expenses.

## § 12 LEGAL DEFICIENCIES

1. HPC guarantees that the contractual use of the results does not violate the rights of third parties. In case of legal defects, HPC guarantees rectification in that it guarantees the contracting entity a legally correct opportunity for use of the delivered services or, at its discretion, a replaced or changed service of the same value.

2. If a third party claims rights that obstruct the exercise of the contractually granted permission for use, the contracting entity is to immediately and fully notify HPC in writing. If the contracting entity discontinues the use of the results to minimize damage or for other important reasons, it is to notify the third party that the acknowledgment of the alleged infringement is not associated with the discontinuation of use. It now grants HPC the authority to carry on a dispute with the third party alone, in and out of court. If HPC makes use of this authorization that is at its discretion, the contracting entity may not recognize the third party's claims without the approval of HPC and HPC is required to defend the claims at its own expense. It releases the contracting entity from the costs and damages in the claim defense that are exclusively ascribed to HPC.

3. § 11, subsection 5 and 6, apply accordingly.

## § 13 LIABILITY

1. In all cases of contractual and non-contractual liability, HPC provides compensation or reimbursement for futile expenses only:

a. For damages caused by intent or gross negligence, as well as in cases with culpable injury to life, body, or health unrestricted in the framework of statutory provisions;

b. With errors in regard to a quality that was guaranteed by HPC, only in the amount of the foreseeable damage that was to be covered by the purposes of the warranty;

c. In other cases: only in the case of a violation of a fundamental contractual obligation if the contractual purpose is endangered, but always limited to EUR 100,000 per claim, with a total of EUR 250,000 from the contract.

2. The objection to contributory negligence (e.g. from § 5) remains open. The limitations for liability in accordance with § 1 do not apply for liability for personal injuries and in the case of liability under the product liability law.

3. There is a legal limitation period of one year for all claims against HPC for compensation or reimbursement of futile expenses for contractual and non-contractual liability. This does not apply for liability in the case of intent, gross negligence, or personal damages, or in accordance with the product liability law. The legal limitation period in accordance with subsection 1 begins with the point in time defined in § 199 subsection 1 BGB. It begins at the latest with the expiration of five years after the generation of the claim. The differing legal limitation period for claims due to material or legal defects (§ 11 subsection 5 and 6; § 12 subsection 3) remain unaffected by the regulations of this paragraph.

## § 14 NON-DISCLOSURE AND DATA PROTECTION

1. The contracting parties agree to treat the content of the contracts concluded between them and all knowledge of confidential information and company secrets by the respective other contractual partners as confidential for an indefinite period of time and to use it only within the scope of order fulfillment. They will protect confidential information from unauthorized access and treat it with the same care that they would use for their own equally confidential information, as a minimum with the due diligence of a prudent businessman.

2. The contracting entity may only make contractual objects accessible to employees and other third parties as far as it is necessary for the exercise of its authority of use. For that matter, it keeps all contractual information confidential. It will inform all people to whom it grants access to the contractual objects about HPC's copyrights (§ 8) to the contractual objects and the requirement for secrecy and require these people to pledge their duty of confidentiality in writing.

3. The contracting entity ensures that all necessary conditions have been created (such as by procuring declarations of consent) so that HPC can perform the agreed-upon services as well as without any violation of the law on data protection regulations.

4. The contracting entity will carefully store the contractual objects – especially the source programs and documentation possibly left with it – in order to avoid misuse.

5. The parties respect the rules of the data protection law and will therefore process and use the personal data of the respective other contract party while complying with the provisions of the data protection laws and only for contractually agreed-upon purposes. As far as the contract partner's personal data is processed, the parties will only entrust this to employees who are obliged to maintain confidentiality and data protection. In particular, personal data is secured by the parties from unauthorized access and only passed along to third parties with the agreement of the other party or the people affected. As far as it is necessary for the contracting entity to give HPC access to personal data to carry out an order, it is noted that the employees engaged were informed about their data protection requirements and are committed to the data protection regulations.

6. HPC is authorized to include the contracting entity in its list of reference customers and to publish it.

#### **§ 15 FORCE MAJEURE**

HPC is not liable for delays in the provision of services due to force majeure, equivalent situations (e.g. strike, lockout, administrative order, general disruptions of telecommunications etc.) and circumstances that are part of the contracting entity's area of responsibility. In these cases, HPC is entitled to postpone provision of the affected services for the length of the impediment, including an appropriate start-up period.

#### **§ 16 ARBITRATION**

The contracting parties agree to call the arbitration body of the Deutsche Gesellschaft für Recht und Informatik [German Association of Law and Informatics] ([www.dgri.de](http://www.dgri.de)) for all disagreements from or relating to this contract, contract extensions, or amendments that they cannot resolve themselves, in order to completely or partially, provisionally or conclusively, settle the disagreement in accordance with their valid arbitration regulations or arbitration regulations valid at the time of initiation. The legal limitation period for all claims from the matter in dispute is suspended from the request for arbitration until the end of the arbitration proceedings; § 203 BGB shall apply accordingly.

#### **§ 17 FINAL PROVISIONS**

1. The exclusive court of jurisdiction for all disputes from and relating to this contract is Mannheim, as far as the contracting entity is a businessman, a legal entity under public law or special fund under public law.

2. The laws of the Federal Republic of Germany apply, under exclusion of the UN Sales Convention.

3. Changes or amendments to the contract must be in writing. This also applies for changes to this clause on the written form. The written contract concluded between HPC and the contracting entity conclusively contains all agreements between the contracting parties about the contractual object. Written or oral subsidiary agreements are not met or are made invalid by this contract. The verification of a supplementary or changing subsidiary agreement is permissible.

4. If a provision of these conditions or of this contract should be or become ineffective, the effectiveness of the remaining provisions remains unchanged. In this case, the parties are required to create provisions with a sincere desire to come to a consensus that best establishes a legally effective outcome that comes closest to the invalid provision.

Version as of: October 2019

HPC Aktiengesellschaft  
Harrlachweg 5  
68163 Mannheim