

# General Terms and Conditions of DSwiss AG for the provision of services

## 1. Field of application

These General Terms and Conditions (hereinafter „GTC“) govern the contractual relationship between DSwiss AG, with registered office in Zurich, Switzerland (hereinafter „DSwiss“) and the customer concerning the provision of services.

## 2. Contractual relationship

**2.1** DSwiss provides its services relating to the subject of the agreement solely on the basis of the present GTC and the corresponding offer of DSwiss which has been accepted by the customer (hereinafter the “offer”). Any annexes to the offer form an integral part thereof. The GTC and the offer together form the contract between the parties in regard to the subject of the contract.

**2.2** Unless otherwise explicitly specified in writing, the contract replaces all previous arrangements, correspondence, declarations, negotiations or agreements of the parties concerning the subject of the contract.

**2.3** General terms and conditions or similar conditions of the customer only apply if these have been explicitly accepted by DSwiss in writing.

**2.4** Unless otherwise explicitly specified in writing, all statements of DSwiss made outside of the contract, specifically in brochures and other publications, are non-binding and subject to alteration, and are merely an invitation for an offer.

**2.5** Additions and amendments to the contract, and the rescission of the contract, must be in writing in order to be legally valid. This applies in particular also in regard to the present written form clause.

**2.6** In the event of contradictions between the various constituent parts of the contract, the following order of priority applies: 1: the offer; 2: annexes to the offer; 3: the present GTC. Higher ranking documents take precedence over lower ranking documents.

**2.7** The contract between DSwiss and the customer in regard to the subject of the contract is concluded upon written acceptance of the offer by the customer (hereinafter “conclusion of contract”).

## 3. Services of DSwiss

**3.1** DSwiss undertakes to provide the services described in the contract in accordance with the provisions of the contract. These services are to be performed in a careful manner.

**3.2** Subject to any different regulation in the contract, the place of performance is deemed to be the place where DSwiss has its registered office.

**3.3** DSwiss endeavours to observe any deadlines that have been specified, but cannot guarantee observance thereof and excludes all claims (in particular also liability claims) arising from late performance of its duties.

**3.4** DSwiss is not obliged to personally execute the contractually agreed services. However, the customer is to be informed if third parties are used.

## 4. Duties of the customer

**4.1** The customer will appoint a representative who will be responsible to DSwiss for the issuing of binding statements (project manager), and will authorise the representative to undertake all actions which are necessary for the execution of the contract (including sole signature in the context of the signing of further contracts in connection therewith).

**4.2** The customer will provide DSwiss, free of charge, with all data, information, facilities and access authorisations which DSwiss needs to provide the contractual services, and will also in other respects perform all activities which are necessary for the fulfilment of the contract by DSwiss.

**4.3** The customer must perform all other duties in accordance with the contract in a timely manner.

## 5. Fees, expenses, payment conditions

**5.1** The customer must pay DSwiss the fees as set out in the offer in a timely manner (hereinafter generally the “fees”). If the fees are not specified in the offer, billing is based on hourly rates and the current price list of DSwiss applies.

**5.2** All services which are not explicitly listed in the offer, and which are provided for the customer by DSwiss on the basis of a corresponding enquiry made by the customer, are to be paid for by the customer in addition to the fees (hereinafter “additional fees”). The additional fees are calculated on an hourly basis in accordance with the price list of DSwiss as applicable at the time in question.

**5.3** A fixed price applies only if this has been explicitly agreed between the parties in the contract. In all other cases the agreed fees and additional fees are to be understood purely as guideline prices.

**5.4** If a fixed price has been explicitly agreed, the customer can nevertheless be charged a fee which is above this price, or an additional fee, if the nature or scope of the service as originally defined is changed, or if the customer has provided incorrect information, or if the customer has not fulfilled its duties of cooperation in a timely manner.

**5.5** Expenses (particularly travel expenses and overnight accommodation and meals expenses) are not included in the fee and are to be paid by the customer in addition. These amounts become due for payment immediately. Travel time is regarded as work time.

**5.6** If increased costs arise for DSwiss as a result of circumstances which are attributable to the customer (e.g. as a result of non-performance of the services to be provided by the customer as envisaged in the contract), DSwiss is entitled to make an additional charge to the customer for these outlays.

**5.7** The fees and expenses as set out in the contractual documents, and any additional fees, are understood as being exclusive of value added tax and are to be paid in Swiss francs, unless otherwise specified in the contract.

**5.8** DSwiss can increase the fees and expenses on 1 January of each year by a maximum of 5%. DSwiss must notify the customer of the increase in writing beforehand, giving at least three months' notice.

**5.9** The fees and the additional fees become due for payment immediately upon execution of the corresponding activities by DSwiss. All invoices of DSwiss are to be paid net by the customer within 30 days following the invoice date.

**5.10** The customer is in default after the payment period has expired, without further warning. If payment is made later than this, DSwiss is entitled to charge the customer default interest of 5% per year, together with a lump-sum dunning charge per warning of CHF 20.

**5.11** If the customer is in default with a payment, DSwiss can make the provision of further services in the context of the contract dependent on full payment of outstanding invoices and (at DSwiss's discretion) also on payment in advance or the provision of other security.

## **6. Ownership rights, property rights and rights of use**

**6.1** Ownership of items is not transferred from one party to the other as a result of the contract, unless explicitly specified otherwise in the contract.

**6.2** All rights to results of work arising in the context of the contract (hereinafter "IP rights") belong to DSwiss. The contract does not lead to any transfer of IP rights to the customer, unless explicitly specified otherwise in the contract.

**6.3** DSwiss grants the customer a non-exclusive, irrevocable and non-terminable licence, valid worldwide, to use the results of work that have been created by DSwiss in the context of the contract, in accordance with the provisions of the contract.

**6.4** The customer has no claim to the source code of the software of DSwiss or of third parties, unless explicitly specified otherwise in the contract.

## **7. Confidentiality and secrecy**

**7.1** The parties must keep secret all information, documents and items (subject to reservation of the exercise of rights and duties as contractually agreed or as provided by law) which they have obtained in the course of their business relationship. The parties will take the necessary measures (including vis-à-vis their employees) to ensure secrecy on a permanent basis.

**7.2** The above confidentiality obligation does not apply in regard to information, documents and items which:

- were already known to the party in question before that party gained knowledge thereof,

- are made available to the party in question after the date of the conclusion of the contract, by third parties who are not under any obligation of secrecy towards the other contracting party in this regard, or

- are available to the general public through publication.

**7.3** Both parties must observe the applicable data protection provisions.

## **8. Exclusion of guarantee, restriction of liability**

**8.1** DSwiss will provide the services in accordance with the contract using appropriately qualified specialist staff, and with the exercise of the necessary care. All guarantees of DSwiss over and above this are hereby excluded, unless explicitly specified otherwise in the contract.

**8.2** The parties are liable towards each other in connection with the contract purely in regard to damage which has been caused intentionally or through gross negligence. The parties are not liable for auxiliary staff. Insofar as is legally permissible, any liability over and above this for damage which is directly or indirectly connected with the contract is excluded. This exclusion of liability applies independently of the legal basis on which the damage is asserted.

## **9. Duration, termination**

**9.1** The contract comes into force upon signature thereof by the parties, and remains valid until the provision of services by DSwiss is completed and all outstanding amounts have been paid, or until the contract is terminated by a party in accordance with the provisions as set out in the following.

**9.2** Unless otherwise specified in the offer, each party can terminate the contract per the end of each calendar month, subject to a notice period of 30 days.

**9.3** Each party can terminate the contract with immediate effect for important reasons which are attributable to the other party. The following are in particular regarded as important reasons: (1) non-payment of one or more outstanding accounts, in spite of at least two warnings, (2) the other party being in delay in the fulfilment of a contractual duty, and allowing a grace period of thirty (30) days following receipt of a written warning to expire without taking the necessary action, (3) futile seizure, (4) insolvency, (5) moratorium or (6) bankruptcy of the other party.

**9.4** Notice of termination as envisaged in the present clause 9 must be provided in writing.

**9.5** In the event of the dissolution of the contract, all licences granted under the contract are immediately ended, and the customer must compensate DSwiss for all services already provided in accordance with the contract. The corresponding invoice of DSwiss is to be paid by the customer within 30 days following the invoice date.

## **10. Changes to the contract**

**10.1** If the customer wishes to change the contract (including services which are covered by the contract), it must submit a written request to DSwiss. Within 20 days following delivery of the request, DSwiss will either inform the customer that the desired change is not accepted or submit a specific written offer to the customer in regard to the desired change.

**10.2** If DSwiss wishes to change the contract, it must submit a written request to the customer. Within 20 days following delivery of the request, the customer will inform DSwiss in writing that the desired change is not accepted, otherwise the change proposed by DSwiss will be deemed to have been accepted by the customer.

## **11. Enticement of employees**

**11.1** The parties undertake, during the term of the legal relationship and for a period of 24 months thereafter, not to actively entice away current or former employees or otherwise contractually obligated persons of the other party. Within the meaning of this provision, the term "former employee" designates previous employees of a party who have terminated their employment relationship with that party less than 6 months before the recruitment in question.

**11.2** If a party (hereinafter the "party in breach") is in breach of this duty, the other party (hereinafter the "affected party") is entitled to a contractual penalty in the amount of CHF 100,000 (one hundred thousand Swiss francs) per event. Neither the lapsing of the contractual penalty nor the payment thereof to the affected party has the effect of releasing the party in breach from the observance of its duties as envisaged in this section.

**11.3** In addition to the contractual penalty, the party in breach is also liable towards the affected party for any damage over and above the contractual penalty.

## **12. Final provisions**

**12.1** Irrespective of any secrecy provisions, DSwiss is entitled to communicate freely, over the Internet or in sales documents or elsewhere, the fact that the customer is a customer of DSwiss. However, DSwiss will only use the customer's logo if the customer has issued its written agreement thereto beforehand.

**12.2** The customer only has the right to withhold payments or to offset payments against counter-claims if the customer's counter-claims are undisputed or have been confirmed by final decision.

**12.3** The written form requirement within the meaning of the contract is also satisfied by faxes and emails.

**12.4** Rights and duties arising from the contract can only be transferred to third parties with the consent of the respective other party. The same applies in regard to the transfer of the entire contract to a third party, and to the entry of a third party into the contractual relationship.

**12.5** If a party does not exercise its rights arising from the contract, or does not do so in a timely manner, this does not lead to any forfeiture or loss of the rights in question. The non-exercise or late exercise of a right is not in any case intended to lead to the right in question no longer being exercisable.

**12.6** If one or more of the provisions of this contract are or become null or invalid, the remaining part of the contract is not affected. In the event of the nullity or invalidity of a clause, the clause in question is to be replaced by a clause which approximates most closely to the economic purpose of the invalid provision.

**12.7** The contract is subject to Swiss substantive law, to the exclusion of conflict-of-laws rules and international conventions.

**12.8** The parties will endeavour to reach an out-of-court settlement of any disputes, differences of opinion or claims arising from or in connection with the contract. If the parties do not succeed in reaching an out-of-court agreement, then jurisdiction rests exclusively with the courts in Zurich.