

General Terms and Conditions of Deliberate GmbH

§ 1 Scope

1. These General Terms and Conditions ("GTC") apply to all legal and commercial transactions, in particular orders, contracts, deliveries, offers and services of Deliberate GmbH (hereinafter "DELIBERATE"). They also apply to all future deliveries, services and offers of DELIBERATE, even if they are not agreed upon again separately.
2. Terms and conditions of the customer or third parties shall not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter which contains or refers to the terms and conditions of the customer or a third party, this does not imply any agreement with the validity of those terms and conditions.
3. These conditions do not apply to consumers according to § 13 BGB.
4. These terms and conditions can be accessed, printed, downloaded or saved at any time on the website of DELIBERATE at <http://www.deliberate.de>.

§ 2 Offers, conclusion of contract

1. Offers of the DELIBERATE are, unless otherwise agreed, subject to confirmation. As far as our offers do not expressly contain a binding period, we are bound to it for two weeks after the date of the offer.
2. A contract is concluded by written offer confirmation of the customer or by written order confirmation of the DELIBERATE.
3. If the customer accepts the order with deviations, the customer must clearly point out these deviations to DELIBERATE. A contract is only concluded if DELIBERATE agrees to these deviations in writing.

§ 3 Scope of services Services

1. DELIBERATE provides consulting services. The information contained in the written offer documents of DELIBERATE is the sole basis for the services to be provided by DELIBERATE. Before placing an order, the customer shall carefully examine the offer documents, in particular any information on quantity structures including reserve capacity, reaction times, professional and industry-specific specifications, interoperability and technical requirements for use.
2. The procurement and maintenance of the standard software mentioned in the offer documents, as well as the procurement and maintenance of the necessary hardware is the responsibility of the customer. The same applies to the standard software, program tools or auxiliary programs required to use the work results. Deviations from this must be expressly regulated in each individual case and DELIBERATE is entitled to demand additional remuneration. The general licence conditions of the licensor apply.
3. DELIBERATE is not obliged to hand over data carriers, files and data without a separate agreement, as far as this is not necessary for the fulfilment of the contract. If the client wishes to have the data handed over, this has to be agreed and paid separately.
4. DELIBERATE may at any time and without prior notice replace its employees working for or on behalf of the customer, provided that the new employees have nearly comparable experience and qualifications.
5. If DELIBERATE discovers circumstances in the course of the performance of services which could endanger the success of the project, DELIBERATE will immediately inform the client of such circumstances.
6. DELIBERATE is entitled to have the performance obligations under this contract carried out in whole or in part by third parties. The services of DELIBERATE may only be used by the client for his own purposes and may not be

passed on or made available to third parties directly or indirectly without prior written consent of DELIBERATE. Exceptions are made for persons employed in the business of the customer.

7. The customer is not authorized to give instructions (e.g. concerning labour law) to DELIBERATE, its employees, vicarious agents or assistants. The provision of services by DELIBERATE takes place in coordination with the client. DELIBERATE is responsible for the manner in which the services are performed.
8. Unless otherwise agreed in individual contracts, the installation of the delivered goods is not subject of DELIBERATE's obligation to perform. In this case, the customer will commission DELIBERATE with the installation.
9. Introduction and training of the customer's personnel shall only be carried out by agreement and against separate invoicing.

§ 4 Obligations of the customer to cooperate

1. The provision of the agreed services by DELIBERATE requires the close cooperation of the contracting parties and the involvement of the client. The customer will provide DELIBERATE with all necessary and reasonable support during the preparation and execution of the services.
2. In particular, the client shall provide DELIBERATE with the appropriate and necessary information, materials, data, content, premises, technical environments, informants and documents required for the provision of DELIBERATE's services at no cost to DELIBERATE. The client shall make decisions incumbent upon him that are necessary for the provision of DELIBERATE's services without delay and shall inform DELIBERATE accordingly. The client shall ensure access to its premises and/or facilities and provide the necessary number of workstations and contact persons.
3. Unless otherwise agreed, the customer shall also duly provide the hardware and software components necessary for the performance of the service if required.
4. In order to fulfil his obligation to cooperate, the customer shall employ sufficiently qualified staff. The customer's employees will inform DELIBERATE without being asked about circumstances typical for the industry or company-specific circumstances, as far as these are not listed in the offer documents. The customer provides all technical documents which may be necessary for the successful execution of the project in a suitable form. The customer shall ensure that the employees deployed by the customer have the decision-making and representation powers necessary for the implementation of the project. This applies in particular to the agreement of order changes or additions to the order.
5. The customer has to notify DELIBERATE immediately of all recognizable defects of the service or damages and to take all reasonable measures to facilitate and accelerate the elimination of a disturbance. The notification must be made to DELIBERATE in writing.
6. The customer is responsible for appropriate conditions for the performance of DELIBERATE's services and for the proper use of the components and software provided by the customer.
7. The customer will secure his data and his (telephone) connections provided to him for DELIBERATE against access by third parties. The customer will take special precautions if he grants third parties the right to access a connection from outside (remote access). The customer bears the burden of proof that he has taken the security measures according to the state of the art.
8. If the client receives a user ID and password within the scope of the contractual cooperation with DELIBERATE, he is obliged to keep this confidential. The customer is only entitled to transfer these data to a third party if DELIBERATE has agreed in writing to such a transfer of

use to a third party. This applies regardless of whether the transfer of use is partial or complete, against payment or free of charge.

9. The client will keep DELIBERATE constantly informed about all circumstances from his sphere that could have an impact on DELIBERATE's contractual obligations, especially on the works, schedules, prices and the further progress of the project. The customer is further obliged to obtain all official permits required for the execution of the project.
10. If the customer does not fulfil one of his obligations to cooperate properly or in time, the contractually agreed execution deadlines shall be extended. Unless a longer or shorter delay is specifically proven or otherwise agreed, the extension shall be for the period of time that elapses until the proper or delayed fulfilment of the obligations to cooperate. DELIBERATE may set the customer a reasonable period of time for the customer to complete his cooperation action with the declaration that DELIBERATE will terminate the contract if the action is not completed within the period of time. DELIBERATE may charge the client for additional expenses caused by the client's lack of cooperation, in particular for the extended provision of its own personnel or material resources.
11. The customer shall ensure that his data and contents are regularly backed up. Without a separate agreement there is no obligation for data backup on the part of DELIBERATE.
12. If the customer violates an obligation from § 4.1. - § 4.8., DELIBERATE is entitled to extraordinary termination of the contract after unsuccessful warning.
13. The customer shall provide the cooperation incumbent upon him free of charge, unless individual cooperation services of the customer, e.g. the provision of personnel, workplaces, test data as well as periods and deadlines for this are specified in the offer or individual contract as being to be remunerated. If the amount of the remuneration is not determined, the appropriate remuneration shall be deemed agreed.
14. The customer bears the burden of proof that he has fulfilled his contractual and cooperation obligations.

§ 5 Terms of delivery of hardware and software

1. DELIBERATE is entitled to partial deliveries and partial services.
2. The basis for the indicated expected delivery date is the delivery time DELIBERATE has informed the customer.
3. If DELIBERATE does not receive deliveries or services which are necessary to fulfil contractual obligations to the customer in time through no fault of its own, DELIBERATE has the right to release itself from its obligation to perform. In this case DELIBERATE will inform the customer immediately about the unavailability and refund the customer the amounts already paid for the part of the delivery or service.
4. The delivered contract goods or the rendered services and / or the work results remain, until payment of the contract price and settlement of all claims arising from the business relationship, as reserved goods in the property of DELIBERATE.

§ 6 Liability for material defects and defects of title

1. The customer has to check the delivered works and services immediately after delivery for correctness, completeness or obvious defects and has to notify DELIBERATE immediately in writing of any complaints and to describe them in detail. If the immediate complaint is omitted, the services are considered as approved.
2. DELIBERATE provides supplementary performance according to § 635 para. 1 BGB. Insignificant defects will be collected by DELIBERATE and repaired together within a

reasonable time after notification. The customer shall provide DELIBERATE on request and to a reasonable extent with documents and information that enable DELIBERATE to assess and remedy the defect.

3. The customer will support DELIBERATE in the removal and in particular provide computers, rooms and telecommunication facilities. The customer's employees will provide DELIBERATE with comprehensive information - also verbally - for the purpose of identifying defects. DELIBERATE may demand that the customer's personnel install program parts with corrections (so-called "bug fixes").
4. The customer has a claim to subsequent performance in the event of defectiveness of the service. If the supplementary performance fails repeatedly, the customer may, at his discretion, reduce the purchase price or withdraw from the contract without notice. This also applies if DELIBERATE refuses the supplementary performance or if it is unreasonable for the customer.
5. DELIBERATE does not guarantee for damages caused by unsuitable or improper as well as unauthorized use, incorrect commissioning or treatment, incorrect repair or rectification attempts by the customer or third parties commissioned by the customer, natural wear and tear or unsuitable equipment. The customer bears sole responsibility for independent modifications to DELIBERATE's results and deliveries that are made without DELIBERATE's consent.
6. The warranty period is 12 months from delivery of the object of the contract in the case of purchase contracts or 12 months from acceptance in the case of contracts for work and services. §§ Sections 438 para. 3, 634a para. 3 BGB remain unaffected. The customer's claims for damages due to a defect become time-barred 12 months after delivery of the goods or production of the work. This does not apply if DELIBERATE has acted culpably or in case of injury to life, body or health of the customer.

§ 7 Changes to the service to be provided

1. If tender documents and / or offer documents contain gaps or ambiguities, DELIBERATE may, at its own reasonable discretion, specify this in an appropriate manner.
2. If DELIBERATE incurs additional work for DELIBERATE due to gaps in the documents provided by the customer, DELIBERATE is entitled to invoice the additional work incurred. This also applies to additional expenses resulting from contradictory or incorrect information provided by the customer, its employees or other vicarious agents.
3. The DELIBERATE reserves the right to accept requests for changes or additions. If DELIBERATE carries out change requests, the agreed deadlines are not applicable if they have not been confirmed or new deadlines have been set. DELIBERATE will charge for the additional work involved in checking and documenting change or supplement orders and preparing cost estimates.
4. DELIBERATE continues to work on the basis of the concluded contract until written agreement on possible changes/additions.

§ 8 Approval

The following provisions shall only apply if acceptance is contractually agreed or DELIBERATE provides an agreed work performance.

1. As soon as DELIBERATE has provided the contractually agreed work services, DELIBERATE declares to the customer that it is ready for acceptance. At the latest one week after receipt of this declaration, the customer will begin with the acceptance test. Within a period of two further weeks, the customer must either notify DELIBERATE in writing of the acceptance or notify DELIBERATE in writing of any defects found.

2. If detected defects are not notified within the aforementioned period or if acceptance is not declared within the aforementioned period, the service shall be deemed accepted. Partial acceptances are only possible if this has been expressly agreed.
3. If the customer fails to accept the goods despite the expiry of the deadline in accordance with § 8.1 for reasons other than a defect, the acceptance shall also be deemed declared.
4. As long as DELIBERATE has not received the customer's written confirmation of acceptance, the customer is not entitled to use the work productively. If the customer nevertheless puts the work into productive use, this shall be deemed to be acceptance.

§ 9 Remuneration and terms of payment

1. The remuneration for all services is regulated in the respective offers of DELIBERATE or individual contracts.
2. All prices are subject to the respective statutory value added tax.
3. All payments are due immediately after receipt of the invoice without deduction and are to be paid within 14 days of the invoice date. If partial deliveries are made, the partial purchase price is due after each delivery.
4. Services offered on a time and material basis are invoiced monthly.
5. DELIBERATE is entitled to demand an advance payment of 1/3 of the total order value each time the order is placed, on delivery and on commissioning, unless otherwise stipulated in the individual contract.
6. DELIBERATE is entitled to charge interest on arrears in the case of late payment at eight percentage points above the base rate. In addition, DELIBERATE may charge a processing fee of 8.00 Euro per reminder.
7. DELIBERATE reserves the right to assert further claims due to delay in payment.
8. The customer has to raise objections against the invoice of the services rendered by DELIBERATE within twelve weeks after receipt of the invoice in writing at the office indicated on the invoice.
9. The customer is only entitled to offsetting if his counterclaims are undisputed or have been legally established. The customer shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship as the claim in dispute and is undisputed or has been legally established.
10. DELIBERATE reserves the right of ownership of the delivered goods and services / work results until full payment of all claims existing at the time of delivery or arising later from this contractual relationship; in case of payment by cheque or bill of exchange until they are cashed.
11. "Man days", "person days", "performance days" and the like are working days of 8 hours each.
12. Travel costs and expenses will be invoiced separately, unless otherwise agreed in the offers.
13. All payments shall be made in Euro or in the respective legal currency of the Federal Republic of Germany.

§ 10 Copyright and rights of use

1. DELIBERATE grants the customer a non-exclusive right of use of the work results created especially for him as soon as DELIBERATE's claims for payment against the customer arising from the respective project contract have been fulfilled. DELIBERATE allows the customer to use the work results to the extent necessary for the contractually agreed purpose. Otherwise, DELIBERATE is entitled to the exclusive and sole rights of use and exploitation of the project results.

2. As far as standard software is provided, the general license conditions for standard software of the licensor apply.
3. The granting of rights does not extend to models, methods, auxiliary programs, program modules, program modules such as libraries, pre-existing materials as well as standard products used by DELIBERATE for the performance of the contract.
4. Each party retains the exclusive rights to industrial property rights, copyrights and other know-how which the respective party held when the contract was concluded or acquired outside the project.
5. DELIBERATE is entitled to retain one copy of the project documents for quality assurance and evidentiary purposes even after completion of the project.

§ 11 Confidentiality, data protection

1. The parties to the contract mutually undertake to treat as confidential all information made available to them under the contract by the other party, as well as knowledge which they acquire on the occasion of cooperation on matters - for example of a technical, commercial or organisational nature - of the other party to the contract, and not to exploit or use such information or make it available to third parties without the prior written consent of the party concerned, both during and after termination of the contract. Any use of this information shall be limited to use in connection with the performance of the respective contract.
2. This confidentiality obligation shall not apply to information which the other party has demonstrably received or is receiving from third parties in a lawful manner or has developed independently itself, or which was already publicly accessible at the time of the conclusion of the contract or subsequently became publicly accessible through no fault of the recipient of the information.

3. Personal data of the customer will only be collected, processed or used if the person concerned has given his consent or if the basic data protection regulation, the Federal Data Protection Act (BDSG), the Telemedia Act (TMG) or another legal provision orders or allows it.
4. DELIBERATE treats personal customer data confidentially and according to the legal data protection regulations. A passing on of personal customer data without explicit consent does not take place or only in the context of the necessary completion of the contract.
5. Subject to § 11.1, § 11.0 and § 11.4 the customer gives his consent that DELIBERATE may pass on personal data of the customer as well as other data provided by the customer to DELIBERATE to the following recipients
 - to courts and authorities, as far as DELIBERATE is obliged to do so,
 - to third parties who support DELIBERATE in the provision of the purchased service.
6. The parties to the contract shall place their employees, agents and vicarious agents under a corresponding obligation.
7. The obligations described above shall remain in force for both parties for a further five years from the end of the contract after its termination.
8. DELIBERATE is not prevented from participating in other projects of the same or similar tasks or from providing comparable services for other clients. The obligation of secrecy remains unaffected.

§ 12 Liability

1. The parties shall be liable for intent and gross negligence in the event of breach of material contractual obligations or injury to life, limb or health in accordance with the statutory provisions.
2. DELIBERATE is liable in the same way for the subcontractors it uses or the employees of service partners of DELIBERATE.
3. In all other respects, a party shall only be liable if it has breached a material contractual obligation (cardinal obligation). In these cases, liability shall be limited to compensation for foreseeable, typically occurring damage. Cardinal obligations are such contractual obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely.
4. In no event shall either party be liable for compensation for atypical damages, indirect damages, loss of profit, incidental or consequential damages, even in the event of negligence or strict liability, whether or not the party knew of or could have foreseen the damage.
5. The liability of both parties is limited to the remuneration or usage fees actually paid to DELIBERATE by the customer or purchase prices and maintenance fees for hardware and software provided by DELIBERATE to the customer under this contract.
6. The liability for property damage is additionally limited to the sum insured under the liability insurance taken out by DELIBERATE, i.e. EUR 3,000,000 lump sum for personal injury and/or property damage, within the sum insured for property damage EUR 1,000,000 for financial loss. The sum insured for the environmental basic insurance is EUR 3,000,000 lump sum for personal injury and property damage as well as co-insured financial losses.
7. If the customer interferes with the delivered work results without the written consent of DELIBERATE, DELIBERATE is not liable for the resulting damage. DELIBERATE reserves the right to claim damages. An "intervention" in the sense of sentence 1 also includes modifications of software or its decompilation.

8. The customer's obligation to avert and minimise damage, in particular in the event of data or file loss, remains unaffected. The loss of data is not replaceable, as long as no regular daily backup copies have been made for it.
9. DELIBERATE is not responsible for materials and content provided by the client. In particular, DELIBERATE is not obliged to check the materials and content provided for possible legal violations. The customer supports DELIBERATE in the defence of claims that third parties assert against DELIBERATE based on the content provided by the customer, especially by providing the necessary information for defence. The customer is obliged to reimburse DELIBERATE for the costs necessary for legal prosecution, which DELIBERATE incurs due to legal claims by third parties based on the content provided by the customer.
10. Liability for loss or damage to data is limited to the effort that would be required to restore the data from the backed up data material if the data had been properly backed up.

§ 13 Statutory minimum wage

1. DELIBERATE assures that the regulations on the statutory minimum wage in accordance with the Minimum Wage Act (MiLoG) are complied with. In particular, DELIBERATE assures that DELIBERATE as an employer pays its employees the statutory minimum wage in accordance with Section 20 MiLoG and that DELIBERATE is responsible for the fulfilment of this obligation by subcontractors.
2. If a claim is made against the client for claims arising from the regulations on the statutory minimum wage in accordance with § 21 MiLoG due to an infringement of the same by employees of DELIBERATE or employees of contractors in the further chain of delivery/service, DELIBERATE shall indemnify the client against any costs and claims arising from this.

§ 14 Industrial property rights

1. DELIBERATE guarantees that the work results provided do not infringe any rights of third parties when used in accordance with the contract. DELIBERATE will indemnify the client from third party claims in terms of the aforementioned warranty. The customer shall inform DELIBERATE of such claims of third parties and leave the legal defence or settlement negotiations to DELIBERATE. An independent guarantee is not connected with the above-mentioned regulation.
2. DELIBERATE is entitled to make necessary changes to the work result at its own expense, even if the work results have been accepted and paid for.
3. In addition, DELIBERATE reserves the right to terminate the customer's right of use with respect to infringing work results in individual cases and to reimburse the customer for the unamortized portion of the paid remuneration, calculated on the basis of a straight-line depreciation of the software over the normal useful life.
4. Notwithstanding § 14.1 the customer shall otherwise indemnify DELIBERATE against any claims of third parties arising from the customer's use of the work results not in accordance with the contract.

§ 15 term and termination

1. The contractual periods specified in the respective offers or individual contracts shall apply. Unless otherwise agreed, the following applies: Contracts have a minimum contract period of 12 months and are to be terminated afterwards with a notice period of 4 weeks to the end of the month. Service contracts can be terminated by either party at any time by giving two weeks' written notice to the end of the month, unless otherwise agreed.
2. The right to extraordinary termination for good cause remains unaffected for both contractual partners.

DELIBERATE is in particular entitled to terminate the contract for good cause after setting a deadline or warning if the customer violates his contractual obligations.

3. DELIBERATE is entitled to terminate the contract for good cause without notice or warning, in particular if
 - a) the customer becomes insolvent or suspends payments
 - b) insolvency proceedings are applied for or opened over the assets of the customer or the opening is rejected due to lack of assets.
4. If DELIBERATE terminates the contract for an important reason for which the customer is responsible, the customer has to reimburse the expenses for work already carried out and, if applicable, pay damages (e.g. lost profit).
5. Terminations must be made in writing to be effective.

§ 16 General provisions

1. Supplements, amendments or subsidiary agreements to these conditions must be in writing to be effective. This also applies to the cancellation of the requirement of the written form.
2. The customer allows DELIBERATE to name him as a reference customer on its own website as well as in other media and to publicly reproduce the services rendered for advertising purposes.
3. The assignment of rights of the customer from the contract without prior consent of DELIBERATE is excluded.
4. The business relations and the entire legal relations between the parties shall be governed exclusively by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
5. Place of performance and exclusive jurisdiction is the domicile of DELIBERATE GmbH.
6. Should a provision in these General Terms and Conditions or other agreements be or become invalid, this shall not affect the legal validity of all other provisions or agreements. In place of the ineffective contractual provisions or to fill in gaps, an appropriate provision shall replace the ineffective provision or fill in gaps, which, as far as possible, comes closest to what the parties to the contract would have wanted, had they considered this point.