

Standard Terms and Conditions of Steinbeis Center of Management and Technology GmbH (SCMT) for Services and Project-Services

1. Applicability

- (1) These standard terms and conditions shall apply to all contracts between SCMT and its customers in respect of services (*Leistungen*), in so far as not otherwise explicitly agreed upon in writing.
- (2) These standard terms and conditions shall only apply, if the customer is a merchant and the contract is made within his trade business, or if the customer is a legal person or a trust under Public Law in the meaning of § 310 para. (1) Sentence 1 BGB (*German Civil Code*).
- (3) The standard terms and conditions of SCMT shall apply exclusively. Contrary or deviating terms of the other party shall only be binding if and to the extent that SCMT explicitly consents to their validity in writing. The standard terms and conditions of SCMT apply, even if SCMT fulfills the order of the customer without reservation in the knowledge of contrary or deviating terms of the customer. Deviating agreements apply only to a particular agreement and not to future agreements, unless otherwise explicitly agreed upon in writing.
- (4) The standard terms and conditions shall also apply to all future agreements between SCMT and its customers for services (*Leistungen*).

2. Scope of orders

- (1) The services (*Leistungen*) of SCMT will be provided in any one case within the scope determined in the offer which remains open until the conclusion of the contract as services (*Dienstleistungen*) and/or project-services (*Werkleistungen*) in accordance with the applicable statutory requirements unless otherwise provided in these standard terms and conditions. SCMT provides services (*Dienstleistungen*) (consultation and support of the customer) at its own responsibility. The customer is, however, himself responsible for the results desired and achieved by him. In the case of project-services, SCMT is responsible for the results to be achieved as well as the management, control, and observation of the provision of the service.
- (2) SCMT and the customer are each authorized to apply in writing for modifications to the agreed upon scope of services. SCMT and/or the customer shall examine the possibility of implementing this modification after service of the application therefore. The result of this examination shall be communicated to the other party in writing without delay. SCMT is authorized to invoice its costs to the ordering party, in so far as the ordering party's application for modification requires a comprehensive and costly examination. The contractual adjustments necessary for such an examination and/or for a modification to the agreed upon scope of services shall be set forth in a supplementary agreement.

3. Fulfillment of orders

- (1) Orders shall be fulfilled observing the current state of science and technology.
- (2) Only SCMT is authorized to direct its employees.
- (3) SCMT is authorized to obtain the services of third parties for the fulfillment of orders. SCMT alone, however, remains directly obligated to the customer.
- (4) For project-services, delivery times shall be counted from the date SCMT acknowledges the order but not before all details of the order have been fully clarified; accordingly, this applies to delivery dates as well. All delivery times and dates shall be conditional on availability and the timely receipt of vendor deliveries.
- (5) Unless stipulated otherwise, the criterion for adherence to the delivery times and dates is the day of placing the service (*Leistung*) at the disposal of the customer at the registered office of SCMT.
- (6) In cases of force majeure the contractual obligations of both parties are suspended and the delivery times and dates for the fulfillment of such contractual obligations shall be postponed accordingly; force majeure shall include, but is not limited, to strikes in internal and external companies, freight forwarding delays, machinery breakdown, government actions as well as other circumstances beyond the control of either party. Any occurrence of force majeure shall be immediately reported to the respective other party. Three months at the earliest after the receipt of such notification, both parties shall have the right to withdraw from this contract.
- (7) In the event of non-adherence to the delivery times and dates in case of project-services the customer shall be entitled to claim damages in lieu of performance for non-performance or failure to render performance as owed according to § 281 BGB (*German Civil Code*) and to raise a plea of lack of performance of the contract according to § 323 BGB (*German Civil Code*) but only after having given SCMT a reasonable grace period for the delivery in combination with a caveat -notwithstanding the provisions of §§ 281, 323 BGB (*German Civil Code*) - stating that, after expiration of the

grace period, acceptance of the project-services will be rejected; once the grace period has expired without success, any claim for delivery shall be excluded.

4. Duties of the customer

- (1) The customer shall provide SCMT in sufficient time before the fulfillment of the order, without charge, all information, materials, devices, documents and things, plans, etc., necessary for the fulfillment of the order, and shall do so, if necessary, at its own cost.
- (2) In so far as SCMT carries out its duties at the location of the customer, the customer shall provide the personnel of SCMT, or of the third parties mandated by SCMT access to all space, installations (hardware, software, networks, etc.) and other instrumentalities, during the usual business hours and within operational rules of access without cost, which is ordinarily necessary for SCMT to provide the service. If need be, the customer will obtain functional work stations (*Arbeitsplätze*), at no cost to SCMT, for the employees of SCMT or for third parties mandated by SCMT.
- (3) The customer will furthermore participate in anyway necessary in the fulfillment of the order.
- (4) If the customer does not or does not timely fulfill his obligations under paras. (1) - (3) and if this leads to delays and/or additional work, the agreed upon time frame and/or the agreed upon remuneration shall increase accordingly.

5. Remuneration and payment times

- (1) The services and project-services will be invoiced at the unit price stated in the offer or based on a time-and-materials basis as set forth in the offer after rendering of services (*Dienstleistungen*) or acceptance of the project-services, unless another form of invoice and payment is agreed upon in the offer. In the case of services (*Dienstleistungen*) and project-services on a time-and-materials basis, the accruing hours worked and travel time shall be invoiced at the applicable hourly rates and the used materials at the prices applicable at the time of the service (*Leistung*). Other costs, especially commuting, food, and lodging, will be additionally invoiced. Estimated prices for services (*Dienstleistungen*) and project-services on a time-and-materials basis contained in the offer are non-binding.
- (2) Value-added tax shall be invoiced separately at the applicable value-added tax rate.
- (3) Invoices are payable upon receipt and in full. Unless otherwise agreed, the customer shall be in default of payment, if invoices are not paid within 14 days after the date of invoice.
- (4) In case of default, interest shall be payable at the rate of 8% above the base rate of the European Central Bank. The right to claim further damages shall not be excluded.
- (5) Multiple customers are jointly liable.
- (6) The customers can only set off non-appealable or unchallenged counterclaims or counterclaims recognized by SCMT.

6. Acceptance

- (1) Project-services shall be accepted by the customer as soon as SCMT has demonstrated compliance with the agreed-upon description of services (*Leistungsbeschreibung*). Immaterial deviations do not authorize the ordering party to refuse acceptance. The obligation to cure defects within the scope of liability for warranties remains unaffected thereby.
- (2) Confirmation of compliance with the agreed upon description of services shall be prepared by both parties by the mutual execution of a protocol of acceptance.
- (3) Placing the result of the project (*des Werkes*) in operation and/or the productive use of the project or of parts of the project shall be deemed to be an acceptance.

7. Warranties in the case of project-services

- (1) SCMT warrants that project-services are performed free from defects of material or of title. In particular the project-services performed are in accordance with the agreed-upon description of services (*Leistungsbeschreibung*) and with the agreed-upon scope of services (*Leistungsumfang*).
- (2) In case of defects of the project-services, SCMT shall be liable as follows:
 - a) At the discretion of SCMT, SCMT shall cure the defects or perform new project-services.
 - b) In the case of failure to cure within a reasonable time, the customer may at his own choice reduce the payment or, insofar as the value or usability of the project should be

Standard Terms and Conditions of Steinbeis Center of Management and Technology GmbH (SCMT) for Services and Project-Services

substantially reduced, demand rescission of the contract, provided that claims for further damages remain unaffected hereof.

- c) In the case of defects of material or of title, the customer shall notify SCMT immediately hereof in writing.
- (3) The limitation period for warranty claims shall be twelve months from rendering of the respective service and acceptance of the project respectively. In case the legal provisions in § 438 para. (1) No. 2, § 479 para. (1) or § 634a para. (1) No. 2 BGB (*German Civil Code*) provide for longer limitation periods, these shall prevail.
- (4) Statements in documentation, prospectuses, project descriptions, etc. do not constitute warranties or guarantees. Warranties or guarantees require the explicit written confirmation of SCMT in any case.
- (5) Apparent errors such as typographical errors, calculation errors, defects of form, etc., which are contained in a report, expert opinion, or other professional utterance of employees of SCMT may be corrected by SCMT at any time.

8. Liability

- (1) Claims for damages and expenses of the customer (hereinafter claims for damages), based on whatever reason, in particular for breach of contractual obligations and based on tort, shall be excluded.
- (2) The limitations on liability of para. (1) do not apply, where a liability is mandatory under legal provisions, e.g. under the German Product Liability Act (*Produkthaftungsgesetz*), in case of intentional or grossly negligent actions, in case of damages to life, body or health of persons and in the case of breach of material contractual obligations. In the case of breach of essential contractual obligations, the liability for damages shall be limited to the contract-typical and foreseeable amount and shall be subject to the limitation period applicable for warranties under it. 7. para. (3) above, unless in the case of intentional or grossly negligent actions or in the case of damages to life, body or health of persons. The aforementioned regulations shall not imply a change of the burden of proof at the expense of the customer.
- (3) SCMT shall be liable in the case of project-services for the damages of the customer caused by delay, if a firmly agreed-upon time for the complete fulfillment of performance is exceeded for reasons exclusively in the responsibility of SCMT. The damages amount to be paid shall be limited, on the merits, to the proved damages of the customer and, in amount, to 0.5% for every accomplished week of delay, totaling however not more than 5% of the total payment for that part of the service not timely completed. The provision of this it. 8 para. (2) sentence 1 remains unaffected. The customer shall be obliged, upon the request of SCMT, to declare within a reasonable time, whether he rescinds the contract because of the delay of the project-services and/or claims damages instead of performance or requests continued performance of the services; once the grace period has expired without success, any claim for delivery shall be excluded.
- (4) In so far as the liability of SCMT is limited, this shall also apply to the employees of SCMT and to any third parties mandated by it.
- (5) The customer shall notify SCMT without delay in writing of any damages for which SCMT may be responsible, and give SCMT the opportunity to examine the damages and their cause.

9. Confidentiality

- (1) The parties shall not make economic, technical and other information and knowledge, either made available by the respective other party in the preparation and execution of orders or otherwise having come into the knowledge of the parties, available to third parties or use it for their own purposes beyond the purposes of the order without the prior written consent of the respective other party for the duration of the mandate.
- (2) The obligation in accordance with para. (1) does not apply to information and knowledge, which
- was known to SCMT before the issuance of the mandate,
 - SCMT legally received from third parties,
 - was generally known upon the issuance of the mandate,
 - became known subsequently without a breach of the obligation in accordance with para. (1)
- (3) The obligation under para. (1) applies to both parties after the expiration of the mandate for another two years.
- (4) The customer recognizes the necessity of scientific presentations and publications by SCMT and will therefore not unreasonably withhold any consent necessary under para. (1).

10. Data Protection

The parties shall process or use personal data of the respective other party only for contractually agreed upon purposes under the observation of statutory requirements.

11. Inventions

- (1) Inventions, which are jointly made by the employees of SCMT and the customer during the execution of a mandate as well as protected privileges issued therefore stand at the joint disposal of the parties.
- (2) Inventions which are made during the fulfillment of an order by employees of SCMT as well as protected privileges issued therefor belong to SCMT. Inventions which are made during the execution of a mandate by the employees of the customer as well as protected privileges issued therefor belong to the customer.
- (3) The grant of licenses to inventions in the sense of paras. (1) and (2) and to the protected privileges issued therefor requires a special written agreement.

12. Work product

- (1) The transfer of ownership (*Eigentum*) and use rights in work product of any kind achieved within the framework of the scope of services (*Leistungsumfang*) agreed upon in the offer and notified to the customer, as, for example, documentation, reports, planning documents, evaluations, drawings, program materials, etc., requires a special written agreement. SCMT reserves, however, in any case, a non-remunerated and non-exclusive right to use such work product for the purposes of research and education.
- (2) SCMT carries no responsibility if technical documentation provided to it by the customer or within the customer's mandate breaches existing copyrights, industrial property rights, or other rights of third parties. The customer is alone liable if rights of third parties are violated by the fulfillment of its mandate. The customer shall indemnify SCMT against all claims of third parties for any such violation upon demand. Item no. 8 herein remains unaffected.

13. Termination

- (1) Contracts can be terminated at any time on 30 days' notice to the end of a calendar month.
- (2) The termination of contracts for good cause is possible at any time.
- (3) In those cases of termination under paras. (1) and (2) the customer shall pay the remuneration minus that part of the remuneration for the agreed-upon scope of services, which was saved by the termination. SCMT has an additional claim to payment for the services and costs which accrue in connection with the termination, also in respect of third parties.
- (4) If the termination occurs for reasons to be attributed to SCMT, then SCMT has a claim to payment for the services (*Leistungsumfang*) brought up to that time only in so far as they can be used by the customer.
- (5) Termination requires the written form in any case.

14. Issuance of documents and things, retention right

- (1) The customer may demand the return by SCMT of the documents and things issued to it after expiration of a mandate. SCMT may refuse this return, until all of its claims under the agreement have been satisfied, in so far as such retention of particular documents and things in light of the facts and circumstances, especially in terms of the relative immateriality of the amounts owed, does not violate public policy.
- (2) SCMT can produce and retain duplicates or copies of documents which it returns to the ordering party.

15. General provisions

- (1) Agreements are concluded in written form. Side agreements are only effective if they have been confirmed in writing by SCMT.
- (2) The transfer of rights and duties under the agreements by the customer to third parties requires the prior written consent of SCMT.
- (3) Jurisdictional venue is Filderstadt.
- (4) These standard terms and conditions and any contract hereunder between SCMT and the customer shall be governed by and construed exclusively in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby expressly excluded.