

**General terms and conditions of Deepshore GmbH  
(hereinafter referred to as "Deepshore")**

**Section 1  
General conditions**

**§ 1 - Order placement and execution**

1. Unless otherwise agreed in individual contracts, offers provided by Deepshore are subject to confirmation. A contract is only considered to have been concluded if both parties have signed it, or if a customer places a written order which is accepted by Deepshore by countersignature or written confirmation. Only the confirmed contractual content and these T&Cs shall form the basis for the provision of services by Deepshore. The scope of the contractual services is based on the aforementioned contractual documents and the associated annexes.
2. Any purchasing, procurement or other general terms and conditions of the contracting party shall not apply, even if the contracting party refers to them when placing an order and Deepshore does not expressly object.
3. The contracting party may instruct Deepshore with subsequent changes to the content and scope of the agreed services if this is deemed to be reasonable for Deepshore and if, in the event that other contractual provisions as per Clause 4 below are affected by such changes, these have been agreed as well.
4. If changes as defined in Clause 3 above should affect other contractual provisions (e.g. prices, execution time, terms of acceptance), the contracting parties shall agree to amend the relevant contract to reflect the required change (e.g. price or date adjustments). Deepshore shall proceed with the work in accordance with the previous contract until such a contract has been concluded.
5. Deepshore reserves the right to expand upon, change or reduce services provided that these amendments do not fundamentally change the subject of the contract and that they are reasonable for the contracting party. In particular, the right to change its services is afforded to Deepshore if this change is customary or if Deepshore is legally bound to make it by changes in legislation or jurisdiction.
6. Deepshore's employees are subject only to Deepshore's decisional and managerial authority even when they are working on site at the contracting party.
7. Deepshore and the contracting party shall each name a contact person and deputy in the event of incapacitation. These individuals shall be responsible for communication between the parties within the context of contract performance. If necessary, they shall be responsible for making immediate decisions on behalf of their respective party.
8. If Deepshore specifies Monday-Friday as a period in its documents the German national bank holidays on 24th and 31st December shall be excluded, provided that they have not been expressly included.

**§ 2 - Obligations of the contracting party**

1. Deepshore shall make every effort to pursue the project planned with the contracting party. However, the success or failure of a contract and its performance also crucially depends on whether, and the extent to which, the contracting party cooperates within the framework of its capability. If the contracting party does not fulfil its duties to cooperate, or does not fulfil them properly, the agreed execution time shall be extended accordingly and Deepshore shall not be held accountable for the resulting delay. In the event that Deepshore incurs additional outlays due to insufficient cooperation by the contracting party, the contracting party shall reimburse such outlays in accordance with the agreed or usual hourly rates.
2. Unless otherwise agreed in individual agreements, the contracting party is obliged to perform the following cooperative actions in particular:
  - (a) The contracting party shall provide Deepshore with all

information, templates and documents required to fulfil the contract free of charge.

- (b) The contracting party shall, without receiving payment, support Deepshore during the performance of the contract to a reasonable extent by ensuring that all of the operating conditions required to perform the contract are in place. It shall do this free of charge. This includes the obligation to ensure that all sites where Deepshore is to perform installations and/or projects have adequate electricity supply, a safe working environment, sufficient space for service and technical equipment, and are appropriately safeguarded against fire, theft and vandalism.
  - (c) The contracting party shall agree the dates and meetings required for performance of the contract with Deepshore and, in case of doubt, shall confer with Deepshore in a timely manner.
  - (d) The contracting party shall notify Deepshore in writing and without delay in the event of deficiencies or malfunctions and shall provide a detailed description of the fault.
3. Deepshore and the contracting party are obligated to adhere to the guiding principles of data security. In particular, they must keep passwords safe or change them immediately (or have them changed) if there is reason to believe that third parties may have gained access to them.
  4. If the contracting party provides Deepshore with software within the scope of this contract, it grants Deepshore a non-transferable, non-exclusive right to use it to the extent agreed in the contract. All rights in terms of software documentation shall remain with the contracting party or its suppliers. The contracting party is solely responsible for the presence and procurement of sufficient licences. If required for software maintenance or as per Section 69 e of the German Copyright Act (UrHG), the contracting party shall request the disclosure of interfaces from the licensor of the software or demand the delivery or deposit of the source code. As a result of the aforementioned fixed right of use, no ownership of the software is transferred. After the contract has come to an end, Deepshore must promptly return the software and the associated supplementary material to the contracting party.
  5. Other specific obligations of the contracting party to cooperate are specified in the Special Conditions and individual agreements.
  6. The contracting party is obligated not to use Deepshore's services in any improper manner. In particular it undertakes:
    - (a) not to violate any legal or regulatory provisions;
    - (b) to observe copyright and other proprietary rights of third parties;
    - (c) not to violate any import or export laws; and
    - (d) not to engage in any anti-competitive behaviour.
 Upon request, Deepshore shall provide the contracting party with adequate product information in order to support the contracting party in fulfilling these obligations.
  7. Any culpable violation of the obligations specified under Clause 6 shall automatically be considered as cause for extraordinary termination. Furthermore, in each case of culpable violation, and in order to avoid further violations, the contracting party is obligated to reimburse Deepshore for any incurred or emerging damages, and to exempt Deepshore from any third-party claims for compensation or reimbursement of expenses arising from the violation. The indemnity obligation also includes the obligation to fully exempt Deepshore from any legal costs incurred (court and lawyer fees etc.).

**§ 3 - Remuneration/payment default**

1. Deepshore shall invoice its services rendered on the basis of

time spent and agreed maintenance fees, consulting, training and/or licensing costs as per the agreed remuneration. If no such agreement exists, the current relevant price list will be used as reference.

2. By way of exception flat fees may be agreed for certain project-related services. These flat fees cannot be guaranteed. In general, they shall not apply beyond the understanding of an estimate as per Section 650 BGB (German Civil Code).
3. If no differing agreement has been made, all types of remuneration shall include separate invoicing of travel time and costs as well as work performed on Sundays and bank holidays according to the agreed hourly rates. If no such agreement exists, the current relevant price list shall be used as reference. Travel time from Deepshore to the contracting party and back shall be invoiced as working hours. Travel costs and expenses shall be reimbursed according to the principles of taxation and other outlays as they are incurred.
4. Deepshore is entitled to invoice effort-dependent remuneration at the end of a calendar month and/or upon completion of a project, unless contractually specified otherwise.
5. All prices quoted are plus statutory Value Added Tax (VAT) at the applicable rate, which is shown separately in the invoice.
6. In the event of payment default, interest at a rate of 5 percentage points above the applicable base interest rate as defined by the ECB shall be charged. Deepshore reserves the right to make further claims for payment default. Furthermore, Deepshore reserves the right to demand payment in advance in case of repeated payment default.
7. Deepshore has the right to suspend all services if the contracting party neglects to pay the agreed remuneration amount, or a considerable portion thereof, on two consecutive occasions or has, within a period of time covering more than two due dates, fallen behind with payments amounting to a sum which corresponds to the remuneration for two months. Deepshore shall inform the contracting party at least 48 hours prior to suspending its services. After the outstanding amounts have been paid, Deepshore shall resume its services. The contracting party shall remain obligated to pay the agreed remuneration even for the time of the suspension of services.
8. If the financial circumstances of the contracting party deteriorate considerably after a contract has been concluded and this might jeopardise Deepshore's claim to remuneration or if, through no fault of its own, Deepshore only learns of such deterioration after a contract has been concluded, Deepshore may refuse to provide the agreed services until the respective remuneration has been paid or securities have been offered.
9. The contracting party can only make offsets with undisputed or legally awarded claims and only enforce a right of retention for such claims.
10. Deepshore reserves the right to change the agreed remuneration after a contract duration of 36 months, with a term of notice of 6 months, according to reasonable discretion and up to a maximum amount that corresponds to the change of the average monthly earnings of employees in the field of information and communication (determined by the German Federal Statistical Office) vis a vis the corresponding average monthly earnings at the time of the last assessment. Should the change lead to an increase of more than 10% of the entire agreed remuneration, the customer shall have the right to terminate the contract in writing at the end of the month within 3 months of receiving notice of the price change. Deepshore shall inform the customer of this possibility to terminate the contract as part of the price change notification.

#### **§ 4 - Service period / acceptance**

1. Dates for the provision of services by Deepshore are only binding if Deepshore expressly confirms in writing that they are binding and if the contracting party has, in a timely manner, provided all conditions that it must ensure are in place for the service to be performed. If Deepshore fails to

comply with binding service dates, the contracting party initially has the right to set an appropriate period of grace and note that, once this deadline has passed without success, it shall reject fulfilment of the contract. After this grace period has passed without success, the contracting party may withdraw from the contract in question. Other claims are excluded unless they are reserved under Section 10 (scope of liability).

2. If services are owed under the service contract, the contracting party shall accept these once they have been provided. The contracting party is obligated to accept partial deliveries of economically severable parts of work. Insignificant deviations from contractual specifications do not authorise the contracting party to decline acceptance.
3. Acceptance occurs in the form of an acceptance declaration within 10 working days from notification of completion of the (partial) work. It is considered to be equivalent to acceptance if the contracting party productively uses the (partial) service or does not point out any significant defects within 10 working days.
4. Deepshore shall eliminate all faults relevant for acceptance within a period of time that corresponds to the severity of the defect and once again present the work to the contracting party for acceptance. The contracting party shall verify the service deliverable within 5 working days from notification of the elimination of the defect(s). Otherwise Paragraph 3 shall apply accordingly.

#### **§ 5 - Rights of use**

1. All rights to the contractual services not expressly granted to the contracting party in individual agreements shall remain with Deepshore or the rights-holding third party.
2. Unless otherwise regulated in individual agreements, or if there are no deviations from Section 2, Deepshore shall grant the contracting party the non-exclusive and non-entitling right to grant sub-licences to use the deliverables and all related information within the European union for its own commercial purposes. This includes the transfer of the object code, but not the source code, for the programmes individually created by Deepshore for the contracting party as part of the project performance.
3. The contracting party is obligated to reproduce copyright notices and all other proprietary notes, which are contained on the original, on all copied items and on each data storage device produced by the contracting party. This also applies to registration numbers.
4. The contracting party may not lease or loan contractual services to third parties for commercial purposes, or pass them on as part of EDP services or for any other temporary use, or use them or let them be used for third party purposes. The contracting party may only transfer the rights of use granted to third parties if:
  - it has notified Deepshore in writing in advance;
  - the recipient acknowledges in writing that the provisions concerning the rights granted to it are binding;
  - the contracting party does not retain any copies of the deliverables; and
  - Deepshore agrees to the transfer in writing. Deepshore may not arbitrarily decline approval. It may object to the transfer if, for example, the recipient is a competitor of Deepshore or if the transfer would lead to a violation of export provisions.

#### **§ 6 - Claims arising from defects**

1. Deepshore shall guarantee that the services rendered comply with the agreed description of services, and that the services are free from any defects which would void the contractually intended use or would make it considerably more difficult.
2. Advertising messages from Deepshore do not constitute contractual statements on the nature of services or goods.
3. The customer is entitled to make statutory claims arising from defects.
4. Any claims arising from defects may only be ceded in relation to the permissible transfer of rights of use
5. No liability shall be assumed for defects which can be traced back to unauthorised changes implemented by the customer,

its personnel or vicarious agents or any other third parties that are not affiliated to Deepshore. In particular, this exclusion of liability shall apply if the customer, its personnel or vicarious agents or any other third parties

- improperly used, maintained or installed the contractual products (e.g. if the products are operated on a system configuration not approved by Deepshore, or if conditions were imposed that do not comply with the ambient or operating conditions shown in Deepshore's documentation) or
  - changed, extended or linked the contractual products to other programmes without Deepshore's consent.
6. Unless otherwise agreed, the limitation period for the contracting party to make claims arising from defects is one year. The period for contractual services shall start from acceptance and, for other services falling under liability for defects, from delivery. The statutory limitation period shall remain intact in cases of wilful intent or gross negligence, fraudulent concealment of the defect or personal injuries.

#### **§ 7 - Confidentiality**

1. The parties hereby undertake to treat as confidential all information obtained from the other party, either directly or indirectly, within the scope of the project. Confidential treatment means that both parties shall ensure that any information obtained from the other party does not fall into the hands of third parties and is not used for personal commercial gain or evaluated for third parties. The parties undertake solely to use the information received for the purposes defined in the contract. Any use or transfer beyond that requires the written consent of the information giver.
2. Each party shall protect the information obtained from the other party with the same care that it protects its own company and trade secrets.
3. The obligation to maintain confidentiality does not apply to information
  - a) which was already publicly known at the time of transfer or which was - through no fault of the information recipient - made public at a later time;
  - b) which was already known to the information recipient prior to the transfer or was lawfully passed on to it by a third party without the obligation to maintain its confidentiality;
  - c) which had been developed or is being developed by the information recipient independent from the transfer.

The burden of proof is incumbent upon the information recipient for the exceptions mentioned in this section.

4. Upon request, each party is obligated to promptly return or confirm the destruction of all information (including possible copies) received from the other party, written or otherwise recorded.
5. The obligation to maintain confidentiality shall remain intact for three years after the collaboration between the parties.

#### **§ 8 - Data protection**

1. Deepshore shall only collect, process and use data in accordance with the German Federal Data Protection Act (BDSG) and other relevant data protection provisions to the extent of the relevant legal provisions.
2. Deepshore shall collect, process and use the data provided by the customer solely for the purposes of fulfilling its contractual services as part of contract data processing under directives (Section 11 of the BDSG) for the contracting party.

The contracting party shall remain in full control of the data collected, processed and used by Deepshore. The contracting party shall remain "master of the data." In the relationship between the parties, all information collected, processed or used for the contracting party by Deepshore belongs exclusively to the contracting party; Deepshore does not hold a right of retention for it.

3. To ensure the security and confidentiality of the data, which is subject to data protection law, Deepshore shall take and maintain the required technical and organisational

measures, particularly those governed by applicable legal framework conditions (especially in accordance with Section 9 of the BDSG).

In particular, Deepshore shall ensure that the data is secured against unauthorised or inadvertent destruction, inadvertent loss (e.g. through events of force majeure), technical defects, adulteration, theft, unauthorised use, unauthorised alteration or duplication as well as other forms of unauthorised access and use. Details on the technical and organisational measures can be taken from the service description.

4. Deepshore has appointed an internal data protection officer and ensured that Deepshore personnel have been informed about the significance of data protection as well as the obligations that fall under the provisions of the BDSG and special provisions related to data protection. In addition, it has received written notification highlighting the Data Protection Act - in particular compliance with Section 5 of the BDSG - and its obligation to process protected data solely in accordance with the relevant legal requirements.

#### **§ 9 - Non-solicitation**

1. The contracting party undertakes not to actively solicit Deepshore employees.
2. In the event of violations during the period of the relevant contract, and up to twelve (12) months after the contract has come to an end, each violation of the aforementioned Clause 2 shall amount to compensation of EUR 75,000 (seventy-five thousand), which shall be payable to Deepshore. Furthermore, Deepshore has the right to extraordinary termination of current contracts, notwithstanding any other claims.

#### **§ 10 - Scope of liability**

1. Deepshore shall carry out all projects and services bestowed upon it by the contracting party with the utmost care. Deepshore shall only be liable for damage claims if the damages can be traced back to culpable violation of an essential contractual obligation by Deepshore, meaning an obligation whose violation jeopardises achievement of the contract purpose and/or whose fulfilment enables the contract to be properly performed in the first place and whose fulfilment may regularly be relied upon (cardinal obligation) by the contracting party, or if the damage can be traced back to gross negligence or intent by Deepshore.
2. If Deepshore is liable for violation of an essential contractual obligation according to Clause 1 above, without the presence of gross negligence or intent, Deepshore's entire liability shall be limited to such damages and to such an extent that Deepshore would have had to have anticipated due to circumstances known at the time that the contract was concluded. The liability in this case shall be limited to the maximum amount of remuneration for the service in question:
  - for one-off remunerations limited to this remuneration; and
  - for ongoing remunerations limited to the annual remuneration.
3. If the conditions under Clause 2 apply, this also excludes liability for consequential damages and missed profits.
4. As per Clause 1 above, Deepshore is only liable to an unlimited extent for the gross negligence of its legal representatives and/or managing employees and/or for intent. For gross negligence of other vicarious agents, Deepshore is only liable to the extent of, and in accordance with, the liability for ordinary negligence according to Clauses 2 and 3.
5. Liability for loss of data is limited to the extent of the amount of effort necessary to recover the loss of data on the basis of available backup copies.
6. Deepshore shall not be liable for any damages incurred through the circumvention of password protection and similar types of safety measures against unauthorised access via "hacking" of the server used by the contracting party.
7. The contracting party shall be liable for all consequences and impairments which may arise for Deepshore through the improper or illegal use of services rendered by Deepshore, or

which may be caused because the contracting party culpably fails to comply with its other obligations.

8. The exclusion or limitation of liability for damages according to the aforementioned sub-sections also applies to potential claims against employees or representatives of Deepshore.
9. Liability for damages expires by limitation after one year from when the contracting party becomes aware of the damaging event, provided that the damage was not caused with intent or by gross negligence.
10. Notwithstanding the above, Deepshore shall remain liable for intentional actions, according to product liability law, due to the lack of assured and/or guaranteed features, guarantees pursuant to Section 443 of the German Civil Code (BGB) and/or Section 639 of the BGB and/or damages resulting from injury to life, body or health.

#### § 11 - Contract duration, termination

1. The duration of the contract shall start from the contractually agreed date or, if no such date has been set, with the initial provision of services by Deepshore.
2. If no minimum contract duration has been agreed, the contracts shall remain ongoing for an indefinite period of time and can be terminated with a notification period of 3 months to the end of the month.
3. If a contract is concluded for a fixed minimum duration of 12, 24, 36 or more months, it shall automatically be extended for another 12 months if one of the two parties does not terminate it in writing 3 months prior to the relevant expiration date at the latest.
4. Both parties have the right to terminate contracts for cause.
5. If Deepshore renders services free of charge it may discontinue these at any time without prior notification. No claims for price reductions, refunds or damages shall arise from this.

#### § 12 - Credit assessment

Deepshore reserves the right to cooperate with credit agencies and credit insurance companies. Upon request, Deepshore shall provide the contract partner with the addresses of these companies. Data may be transferred to these companies upon application, conclusion and termination of the contract. Furthermore, they can be contacted to obtain information on the contracting party. Deepshore may also relay data to the companies on account of execution that is not in line with the contract. The companies store this data in order to be able to give affiliated companies information to assess the credit worthiness of contracting parties or to obtain the address of the contracting party for the purposes of identifying the debtor.

#### § 13 - Other

1. **Choice of law:** Contracts concluded hereafter are subject to German law under the exclusion of possible referrals to foreign law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
2. **Place of performance, place of jurisdiction:** The place of performance is Hamburg, Federal Republic of Germany. The place of jurisdiction, to the extent permitted by law, is Hamburg.
3. **Transfer of rights and duties:** After prior written announcement, the parties have the right to transfer, either in full or in part, the rights arising from the contract to affiliated companies.  
Otherwise the transfer of rights and duties related to the contract requires written consent from the other party, which shall not refuse it unreasonably.  
The aforementioned regulations do not apply to the transfer of pecuniary claims.
4. **Written form:** Changes and supplements to the contract must be made in writing. A waiver of this right may only be made in writing. The written form requirement can also be ensured through telefax or letter exchange. However, Article 127, Paragraph 2, Sentence 1 of the BGB does not otherwise apply.
5. **Contract fulfilment by third parties:** In order to fulfil its obligations laid down in contracts concluded, Deepshore has the right to bring in third parties, including companies affiliated with it pursuant to Articles 15 et seq. of the German Stock Corporation Act (AktG).

6. **Delegation of rights:** Deepshore has the right to transfer all rights and obligations stemming from the contract to an affiliated company as defined under Articles 15 et seq. of the AktG.
7. **Severability clause:** If a provision laid down in these general terms and conditions or in a contract concluded hereafter proves to be ineffective or unenforceable, either in full or in part, this shall not affect the effectiveness and enforceability of the remaining provisions of these terms and conditions or of the contract in question.
8. **Force majeure:** With the exception of the obligation to make payments, each party is exempt from the fulfilment of contractual obligations pertaining to the contracts concluded hereafter if rendered impossible due to force majeure. The definition of force majeure applies, in particular, to strikes or lawful lockouts, fire, flooding, official measures, default or non-fulfilment on the part of suppliers, earthquakes, shut-downs and failures in communication networks and gateways of other operators, or other circumstances which cannot be attributed to the relevant committed party.