

## General Terms and Conditions

### **Preamble**

These General Terms and Conditions define the mutual contractual and conduct obligations for the contracting parties which shall apply to all of the individual services to be provided by PRIM Management Consult GmbH hereinafter referred to as PRIM.

All written agreements between the contracting parties are subject to their copyright, as far as these have been drafted by PRIM. This applies in particular to graphical representations, logos, trademarks, etc.

### **§1 Discretion and Confidentiality**

1. The contracting parties shall agree upon that

- a. all information which is referred to by the others as "confidential" and/or "protected"
- b. all information, which is usually considered as "confidential" and/or "protected" in the ordinary course of the business like information about products, customers, finances and business relationships with third parties
- c. the regulations of this agreement

shall not be passed on to third parties without the prior express written consent of the respective other contracting party.

2. This does not apply to information which
  - a. is available to the public at the time of signing of the agreement or becomes generally available during the term of the contract;
  - b. was acquired by the receiving contracting party, without restriction as to use, before receiving such information from the other contracting party prior to the disclosure;
  - c. was already known by the receiving contracting party based on their own independent work;
  - d. is rightfully received by the receiving party from a third party without restriction as to use.

3. The contracting parties shall also impose this confidentiality obligation on their employees and ensure that it is appropriately fulfilled.

4. Neither contracting party shall use the name, trademark or trade name of the other contracting party (whether registered or unregistered) without the prior express written consent of the other contracting party.

However, PRIM is entitled to use the customer's name exclusively for reference purposes only.

### **§2 Government Permits**

If justified mutual obligations like public permits, permissions, licenses or other authorizations are necessary for the proper execution of this contract and its annexes, the customer shall be obligated to obtain these at its own cost and ensure to appropriately maintain these.

The customer shall not transfer work results and/or acquired products or have it be transferred either directly or indirectly to countries that have export restrictions due to laws and regulations or have restrictions on the movement of sensitive products, unless the customer has obtained the written authorization from the relevant authority in advance.

### **§3 Principles of Service Provision and Pricing**

The services provided by PRIM are invoiced based on time and effort along with an activity report and are based on the respective offer or the hourly/daily rate specified in the order confirmation. For project, consulting and support services that exceed a calendar month, the invoice shall be issued at the end of each respective calendar month. Daily rates for a man/person day during the week cover a working day of 8 hours. If the regular working hours are exceeded (Mo – Fr, 9-18:00) an out-of-hours surcharge of 50 % can be levied. The services may be carried out on site, remote, by E-Mail, by phone or within PRIM's premises.

In PRIM's offer/order confirmation, the services to be provided are either described in detail or are general consulting and support services covering a specific topic offered by PRIM and confirmed by the customer through the order confirmation. PRIM provides its services in principle based on an order confirmation containing an order number provided by the

## General Terms and Conditions

customer, if available. The customer's written order alone is not sufficient.

All stated prices are subject to the statutory value-added tax (VAT) at the applicable rate plus other statutory charges.

Invoices for the services provided by PRIM, including travel expenses, are payable within 7 days of the invoice date strictly net and without any deduction, unless otherwise agreed. The merchandise purchased from PRIM like Hardware and/or Software licenses are due within 7 days without any deduction.

Unless otherwise agreed, PRIM shall charge the customer for any extra expenses incurred in connection with the provided services like travel costs and other costs which are based on a lump-sum as indicated in the offer or order confirmation and invoiced to the customer.

All import duties of goods procured from a foreign country by PRIM on behalf of the customers, in particular, custom duties, will be disbursed by PRIM and charged on to the customers.

### **§4 Data Backup**

The customer shall confirm that it has been informed by PRIM, that PRIM regards it a good practice to backup all software and data, which falls within the scope of this contract, at least once every 24 hours. A disregard to such a practice can substantially reduce the options to minimize possible damage for the customer caused due to irregularities in the operation of its systems or as a consequence of performing support services.

The customer shall be obliged to have a backup procedure besides PRIM's delivered software products needed for the reconstruction of lost or modified files, data and programs. The customer has to periodically update its backup procedure.

PRIM will make use of documented reconstruction methods only on the basis of the customer's latest backup data.

### **§5 Limitation of Liability**

1. Any liability of PRIM - regardless of legal grounds – shall only incur if the damage

a) has been caused by culpable breach of an essential obligation (cardinal obligation) in a way that endangers the fulfilment of the purpose of the contract.

b) is due to gross negligence or wrongful intent by PRIM.

2. If PRIM is liable in accordance with para 1a) for the violation of an essential obligation to the contract, without the occurrence of gross negligence or intent, the liability shall be limited to the scope of loss or damage that PRIM could typically expect to arise on the basis of the circumstances known to it at the time the contract was concluded.

3. The limitation on liability set out in para 2. applies equally to loss or damage resulting from gross negligence or intent on the part of employees of PRIM or persons commissioned by PRIM who are not senior managers

4. In cases covered by para 2. and 3., PRIM is not liable for indirect damage, consequential damage or loss of profits.

5. In case loss of data or programs and their recovery, PRIM shall only be liable in the cases of the aforementioned para. 1. to 4. only to the extent that this loss could not have been avoided by the customer through appropriate precautionary measures, such as creating daily backups of all data and programs.

6. The limitations on liability set in para. 1. to 5. apply accordingly to the benefit of employees and persons commissioned by PRIM.

7. Any liability of PRIM for the lack of warranted characteristics or in with the product liability law shall remain unaffected.

8. The parties shall agree that PRIM shall not be liable for any non-performance or defective performance or losses resulting from Force Majeure.

9. The liability set in para 1. to 8. per individual case is limited to EURO 3.000.000,-, for personal injuries and EURO 1.500.000,- for material and financial losses.

In the case of Force Majeure the following also applies

1. Unavailability of electrical energy by PRIM or the customers;

2. Unavailability of communication facilities;

## General Terms and Conditions

3. Delays in transport beyond our control.

### **§6 Prohibition of Set-Off**

A customer may set off claims only if PRIM has recognized such claims or have been determined in a legally binding manner.

### **§7 Transfer of Rights and Obligations Arising from this Contract**

Neither of the contracted parties can transfer nor assign rights and obligations from this agreement to third parties, in whole or part, without the express written approval of the other contracting party, unless subsequently or in the enclosed individual agreements otherwise agreed upon.

The customer can, however, without the approval of PRIM, transfer all its rights to work results to a third party only if it simultaneously transfers all or almost all of its assets to this party.

However, PRIM is generally entitled to contract a third party, especially affiliated companies to provide partial services to the customer.

### **§8 Written-Form and Protection Clause**

1. Differing General Terms and Conditions of the customer shall not be applicable and shall not become part of the agreement even if PRIM does not expressly reject such terms.

2. Any changes made to these agreements, including this clause, requires the written form.

### **§9 Waivers**

A waiver by either party of a breach of any provision of this agreement by the other party shall not be construed as a waiver of any subsequent breach of the same or any other provision.

The waiver is only valid in written form and must be signed by an authorized representative of the waiving contracting party.

### **§10 Severability Clause**

Should a provision of this agreement be or become invalid or unenforceable, the validity and enforceability of the remaining provisions of this agreement shall not be affected.

In case of ineffectiveness or unenforceability of a provision, the contracting parties are obliged to agree on an effective regulation which is as economically close as possible to the invalid or unenforceable provision.

### **§11 Place of Jurisdiction and Governing law**

All agreements made between the contracting parties are subject only to the law of the Federal Republic of Germany. In case the customer is a registered trader in terms of the German Commercial Code (Handelsgesetzbuch), then Saarbrücken - Germany is hereby agreed as the exclusive place of jurisdiction for both parties.

However, PRIM shall have the right to pursue legal action against the customer at any other permissible place of jurisdiction.

### **§12 Continued Existence**

The rules on confidentiality, discretion and the solicitation of employees shall also remain valid and effective even after termination of this contract.

### **§13 Data Protection Clause**

The data of the customer, if need be, also of its customers, shall be stored and processed by PRIM using IT means insofar as these are necessary for the proper fulfillment of the contracts.

### **§14 Disclosure**

The current version of the General Terms and Conditions is publicly available on our website [www.prim-consult.com](http://www.prim-consult.com).

This agreement was originally written in German. To the extent any translated version of this agreement conflicts with the German version, the German version controls.