



## General Terms and Conditions

English version. For information purposes only.

Please note that only the German version of these General Terms and Conditions is legally valid. This document is a translation made in good faith to the translator's best knowledge.

### 1. Scope

- 1.1. These General Terms and Conditions apply to deliveries and services provided by HCD CONSULTING GmbH (hereinafter **HCD CONSULTING**) to businesses within the meaning of Section 14 of the German Civil Code (BGB).
- 1.2. Contracts concerning deliveries and services provided by HCD CONSULTING are entered into exclusively on the basis of these General Terms and Conditions. HCD CONSULTING does not recognise customer conditions which run contrary to or deviate from these General Terms and Conditions, unless HCD CONSULTING has provided express written agreement regarding their applicability. These General Terms and Conditions also apply if HCD CONSULTING provides its deliveries and services, without reservation, in full knowledge of customer conditions which run contrary to or deviate from these General Terms and Conditions.
- 1.3. For the sale of products from certain manufacturers, special end-customer conditions for sales, licensing and terms of use from the relevant manufacturer take precedence over these General Terms and Conditions. The end customer conditions of the relevant manufacturer will be provided to the customer upon request.

### 2. Formation of the contract

- 2.1. Electronic, written or verbal quotes from HCD CONSULTING are, in principle, subject to change and do not represent a quote as per Section 145 of the German Civil Code (BGB). Instead, they should be understood as merely a request to the customer to place an order. The customer is bound by their order two weeks after receipt by HCD CONSULTING.
- 2.2. A contract is only entered into once HCD CONSULTING has issued written confirmation of the order, at the latest, however, with acceptance of the delivery by the customer.
- 2.3. Quotes and order confirmations from HCD CONSULTING are always subject to a positive check of the customer's creditworthiness and subject to correct and punctual delivery of goods by our own suppliers.
- 2.4. All contractual services are not for use in military, nuclear or other safety-critical areas. Use in such areas requires prior written agreement from HCD CONSULTING.

#### HCD Consulting GmbH

[www.hcd-consulting.de](http://www.hcd-consulting.de)

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#### Legal information

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Managing Director: Alexander Jauns  
VAT No.: DE316266959



### **3. Service, delivery**

- 3.1. As far as nothing else has been agreed in writing, the content and scope of the service arise from the order confirmation. HCD CONSULTING reserves the right to make product changes, especially as a consequence of development, as long as the agreed performance data are achieved.
- 3.2. HCD CONSULTING is authorised to deliver program, installation and product documentation and other documentation in English – should this not be available in the German language.
- 3.3. If not otherwise stated in the written information provided by HCD CONSULTING, delivery is agreed to come from the logistics centre in Ellwangen.
- 3.4. All technical questions must be clarified before the delivery period starts. A delivery period specified by HCD CONSULTING starts with the issue date of the relevant confirmation document, but not before the provision of documents, permissions and approvals to be procured by the customer, as well as receipt of an agreed down payment. The delivery period has been adhered to if the products have left the warehouse by the end of the delivery period, or if the goods have been declared ready for dispatch.
- 3.5. The delivery will be made to the address specified by the customer. As far as not otherwise stated in the quote, the appropriate type of shipping and the transport company will be determined at the discretion of HCD CONSULTING. Deliveries are generally made using UPS or DHL.
- 3.6. Partial deliveries are permissible.
- 3.7. If the customer is in default of acceptance or culpably violates other obligations to cooperate, HCD CONSULTING is entitled to demand compensation for losses incurred, including any extra expenses (e.g. for storage of the products). Further rights and claims shall remain unaffected.
- 3.8. The risk of accidental destruction, accidental damage or accidental loss shall pass over to the customer when the goods are transferred to the transport forwarding company.

### **4. Prices and payment**

- 4.1. The price stated in the HCD CONSULTING order confirmation applies. Otherwise, in as far as nothing else has been agreed in writing, the price stated in the HCD CONSULTING price list on the day of acknowledgement of the order applies.
- 4.2. Prices are net ex-works, plus statutory VAT and costs for transport and packaging.
- 4.3. HCD CONSULTING reserves the right to increase prices appropriately if costs increase after conclusion of the contract – in particular due to wage settlements, raw material price increases or exchange rate fluctuations. HCD CONSULTING will provide evidence of this to the customer upon request.
- 4.4. In as far as nothing else has been agreed, invoices must be paid in full immediately upon receipt. If the customer exceeds the agreed payment period, HCD CONSULTING is entitled to demand – without prejudice to other rights – interest on arrears at the statutory rate. In the

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case of late payment by the customer, all outstanding debts become due for payment immediately.

- 4.5. The customer shall only be entitled to rights of offset or rights of retention if their counterclaim has been legally established or is undisputed, and if the counterclaim is based upon the same contractual relationship.
- 4.6. HCD CONSULTING is entitled to assign its remuneration claims to third parties.
- 4.7. If, after entering into the contract, the customer's financial situation significantly deteriorates – with the appearance that HCD CONSULTING's remuneration entitlement is at risk – or if HCD CONSULTING only learns of such a deterioration after entering into the contract, HCD CONSULTING is entitled to refuse to perform the contractually agreed services until the relevant payment has been made or security has been provided.

## 5. Reservation of proprietary rights

- 5.1. In as far as transfer of proprietary rights has been contractually agreed, HCD CONSULTING reserves ownership and the granting of other contractually agreed rights until full payment has been received. Until full payment has been received, HCD CONSULTING only grants the rights on a temporary basis and is entitled to rescind them.
- 5.2. The customer must treat the products with care. In particular, they are obliged to insure them sufficiently against fire damage, water damage and theft, at their own expense.
- 5.3. When a customer purchases products, the products supplied by HCD CONSULTING may only be resold under reservation of proprietary rights. The customer already relinquishes their purchase price claim from any future sale to HCD CONSULTING now, by way of security. Upon request, the customer is obliged to confirm this act of transfer to HCD CONSULTING in writing. The customer is authorised to collect the claims that have been assigned to HCD CONSULTING, but not to otherwise dispose of said claims. (e.g. via pledging, transfer by way of security). This authorisation can be revoked at any time.
- 5.4. In the case of seizure, or any other impairment of HCD CONSULTING's rights by third parties – in particular, access to goods subject to reservation of proprietary rights – the customer is obliged to notify the third parties of HCD CONSULTING's rights and to inform HCD CONSULTING without delay. Disadvantages, costs and damages resulting from a failure to fulfil this obligation shall be borne by the customer.
- 5.5. Any treatment, processing, or remodelling of goods subject to reservation of proprietary rights will be performed on behalf of HCD CONSULTING. In the event of any processing, connecting, intermingling or mixing of the goods subject to reservation of proprietary rights with other goods which do not belong to HCD CONSULTING, HCD CONSULTING is entitled to the co-ownership share of the new product in the ratio of the value of the goods subject to reservation of proprietary rights to the rest of the processed goods, at the time of processing, connecting, intermingling or mixing. If the customer becomes the sole owner of the new product, the customer shall grant HCD CONSULTING proportional co-ownership. The customer shall keep this for HCD CONSULTING free of charge.

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- 5.6. If the value of the securities given to HCD CONSULTING exceeds its claims by more than 20 %, a corresponding proportion of the securities will be released at the request of the customer.

## 6. Inspection of the goods

- 6.1. The customer is obliged to inspect the products without delay and with due care regarding discrepancies in quality and quantity, and to inform HCD CONSULTING about obvious defects within 7 days after receiving the goods. Timely submission of the notice of defects is sufficient for adhering to the deadline. This applies correspondingly for hidden defects which are discovered later. If this obligation to inspect and report defects is not complied with, assertion of any warranty claims later on shall be excluded. This does not affect Section 377 of the German Commercial Code (HGB).
- 6.2. In addition, any transport damage or incorrect quantities recognisable upon delivery shall be noted on the freight forwarder's receipt, as per Section 438 of the German Commercial Code (HGB).

## 7. Warranty

- 7.1. A prerequisite for the assertion of warranty claims by the customer is that the customer has properly fulfilled their obligation to inspect the goods and report any defects.
- 7.2. If there is a defect and a manufacturer's guarantee exists, before asserting any rights against HCD CONSULTING the customer is obliged to seriously attempt to assert its claims from the manufacturer's warranty vis-a-vis the manufacturer, out of court. HCD CONSULTING will support the customer with this. Otherwise, the warranty claims of the customer remain unaffected.
- 7.3. If the delivered goods are defective, in the context of statutory regulations the customer shall be entitled to demand supplementary performance in the form of rectification of the defect or delivery of a defect-free product. HCD CONSULTING will make the decision regarding the type of supplementary performance to be offered. If the supplementary performance fails, the customer has the right to a price reduction or to withdraw from the contract.

## 8. Consulting services

- 8.1. HCD CONSULTING provides consulting services with the greatest possible care and conscientiousness, in line with the relevant level of proven technology, using qualified employees. In agreement with and at the express request of the customer, HCD CONSULTING will take into account the customer's specific regulations, methods and practices – as far as it makes sense to do so in the individual case.
- 8.2. The customer undertakes the commitment to support HCD CONSULTING's consulting services with appropriate cooperation. In particular, the customer will provide HCD CONSULTING with the necessary information, data, access and passwords promptly – as well as enabling HCD CONSULTING employees to enter the customer's premises to the extent required during

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normal office hours. Furthermore, as far as is required, the customer will provide the necessary equipment in sufficient quantity at their premises.

- 8.3. As far as it is necessary for the specific project, the customer will provide HCD CONSULTING with a contact partner and a substitute contact partner, as a permanent contact for all issues pertaining to the project. The contact person is empowered to take all the decisions concerning the project either by themselves, or to bring them about promptly. Furthermore, the customer will ensure the employees whose special knowledge is required to implement the relevant project are available.
- 8.4. If the customer does not fulfil its obligation to cooperate and, for this reason, HCD CONSULTING is unable to provide its consulting services either completely or partially within the agreed time period, the time period shall be extended appropriately for an agreed duration, for this purpose.
- 8.5. HCD CONSULTING grants the customer a non-exclusive right of use of the work resulting from the consulting services – restricted with regard to location and content – at the moment the remuneration due is paid. The use is authorised in the scope necessary to fulfil the contractually intended purpose within the customer’s business operation.  
**“Work results”** are all pieces of work created in the context of HCD CONSULTING’s provision of consulting services: in particular documents, project sketches, plans, concepts, presentations and designs.

## 9. Liability and force majeure

- 9.1. HCD CONSULTING shall be subject to unlimited liability in the case of intent, gross negligence, or for cases of mandatory statutory liability, as for damage to life, limb or health, or for liability under the Product Liability Act (*Produkthaftungsgesetz*).
- 9.2. In all other cases, regardless of the legal reason, the liability of HCD CONSULTING for ordinary negligence is limited to:
- In the case of infringement of a contractual obligation – the predictable damage typical for the contract, but at most, however, the value of the individual service provided by HCD CONSULTING;
  - The liability of HCD CONSULTING for all other cases of ordinary negligence is excluded.
- 9.3. In the case of force majeure (especially, but not excluding, war, riot, sabotage, industrial action, fire, flooding and other meteorological disturbances, natural disasters, pandemics, official measures, legislative measures etc.) and only insofar as HCD CONSULTING and/or its agents are not culpable for causing the damage/disturbance, the service obligations on HCD CONSULTING and, in particular, the associated claims for damages or payment of contractual penalties, shall not apply.
- 9.4. The rules set out above also apply in favour of agents and employees of HCD CONSULTING.

## 10. Limitation period

- 10.1. The limitation period is in accordance with the statutory provisions for

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- a) Claims against HCD CONSULTING for liability due to intent,
  - b) Claims for damages involving injury to life, body or health resulting from a negligent breach of duty by HCD CONSULTING or an intentional or negligent breach of duty by a legal representative or agent of HCD CONSULTING,
  - c) Claims for other damages resulting from gross negligence by HCD CONSULTING or an intentional or negligent breach of duty by a legal representative or agent of HCD CONSULTING.
- 10.2. The limitation period for all other claims for damages or wasted expenditure against HCD CONSULTING is one year. Warranty rights elapse one year from delivery or acceptance.

## **11. Industrial property rights / copyright**

- 11.1. Industrial property rights and/or manufacturers' and/or licensors' copyrights generally apply to the products (incl. circuit diagrams, drawings, sketches, descriptions and similar documentation, as well as software). Information regarding such proprietary rights on the products may not be altered, covered or removed by the customer.
- 11.2. HCD CONSULTING is only liable for claims due to the infringement of such property rights if HCD CONSULTING knew they existed, or should have known they existed, and this results in the customer being exposed to claims from third parties. HCD CONSULTING's liability is limited to the purchase price of the goods.

## **12. Confidentiality and data protection**

- 12.1. The contract partners are obliged to keep confidential all information – which becomes known to them during the preparation and implementation of the business relationship – which is not generally known and in which the other contracting party has an interest in maintaining confidentiality (in particular operational and commercial secrets), also for the period after the business relationship has finished. The contract partners will ensure that their employees and other agents or subcontractors also uphold the duty of confidentiality. Legal notification and disclosure requirements shall remain unaffected, as shall the necessary and/or appropriate use of information to provide the services/deliveries.
- 12.2. The applicable data protection regulations must be adhered to.

## **13. No poaching of staff**

For the duration of the cooperation between the contracting parties – and for a period of one year afterwards – the customer is obliged not to actively head-hunt HCD CONSULTING employees, or employees of the companies associated with HCD CONSULTING. In each case of culpable breach of this provision, the customer is obliged to pay a contractual penalty, the size of which shall be determined by HCD CONSULTING and, in case of dispute, to be reviewed by the responsible court.

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## 14. Credit checks

HCD CONSULTING reserves the right to work with credit agencies and credit insurance companies. HCD CONSULTING will provide the addresses of these companies to the customer upon request. These companies may be sent data upon application, acceptance and termination of the contract, and may provide HCD CONSULTING with information about the customer. HCD CONSULTING may also report data to the companies due to failure to meet contractual obligations. The companies store this data to be able to give their associated businesses information to evaluate customers' creditworthiness, or to provide a customer's address for the purposes of locating a debtor.

## 15. Final Provisions

- 15.1. The customer may only assign or transfer claims, rights and/or duties from the contractual relationship to third parties with the prior written approval of HCD CONSULTING (Section 126 of the German Civil Code (BGB)).
- 15.2. Amendments and additions to this contract must be made in writing (Section 126 of the German Civil Code (BGB)). This also applies to amendments or additions to this clause.
- 15.3. German law applies to the business relationships between HCD CONSULTING and its customers, excluding application of international private law and the UN Sales Convention.
- 15.4. If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of performance and exclusive legal venue for all disputes arising from the business relationships shall be the company headquarters of HCD CONSULTING.
- 15.5. Should one or more provisions of this contract be wholly or partially ineffective or unenforceable, the legal validity of the other provisions in this contract shall remain unaffected. Instead of this ineffective or unenforceable provision, it is agreed to apply a provision which, legally and factually, most closely approximates the commercial purpose of the ineffective or unenforceable provision. In the case that a gap arises from the contract which cannot be closed by interpretation of the remaining provisions, it is agreed to close such a regulatory gap with a provision which most closely approximates the commercial interests of the contracting parties – should they have been aware of the need for the regulation of this point when originally drawing up the contract.

24.04.2023

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