



**GTC**

# General terms and conditions with regard to services

Effective: 2008/03/01

These General Terms and Conditions ("GTC") regulate the conclusion, contents and processing of orders for services such as consulting, support, training or other company services provided by OpenLimit SignCubes AG ("OpenLimit") to a third party (referred to hereafter as the "Customer") as provided to the Customer on the basis of a special and usually individual agreement.

## 1. Scope of application

- 1.1 All OpenLimit services, such as consulting, support, training or other company services, are subject in their entirety to these GTC insofar as they have not been amended or supplemented by any written agreements.
- 1.2 The placement of an Order includes the application of the GTC by OpenLimit. The General Terms and Conditions of the Customer are opposed. They shall only apply when expressly acknowledged by OpenLimit.

## 2. Offers

- 2.1 Offers submitted by OpenLimit are made free of charge.
- 2.2 Insofar as no deviating provision is set down in the Offer, OpenLimit shall remain bound by its terms for a period of three months from the date of the Offer.
- 2.3 An Order shall be deemed to have been awarded should the Customer give written acceptance of the Offer following its receipt, or a Contract has been signed.

## 3. Services

- 3.1 The type and scope of the services shall correspond to the accepted Offer or shall be regulated in an appropriate contract ("Specification").



- 3.2 OpenLimit shall receive from the Customer all the documentation, information and data necessary to provide the services.
- 3.3 For the purpose of an orderly data backup, the Customer shall additionally keep all documentation, information and data passed on to OpenLimit in such a manner that it can be reconstructed in the event of damage to, or loss of, data carriers.

## 4. Deadlines for the provision of services

- 4.1 Deadlines for the provision of services shall be evident from the accepted Offer or shall be regulated in an appropriate contract.
- 4.2 The deadlines shall be extended as appropriate if the documentation, information and data necessary to provide the services should not be available in good time before the services are to begin for reasons outside the control of OpenLimit.
- 4.3 The deadlines shall also be extended as is reasonable should OpenLimit be impeded in the proper provision of the service due to a subsequent amendment of the Specification or due to any other circumstances outside the control of OpenLimit (such as force majeure, strike action, civil disturbance, natural disasters, etc.).

## 5. Acceptance of the services

- 5.1 The Customer must accept services before fulfilment is effected. Insofar as OpenLimit provides services in accordance with an individual contract, the Customer shall subject every service to an acceptance test without delay after OpenLimit has made this service available to the Customer. Should OpenLimit hand over to the Customer partial services, the Customer shall subject every partial service to an acceptance test without delay after OpenLimit has made this partial service available to the Customer. Acceptance tests are usually performed jointly by both Parties. Acceptance may not be unfairly refused or delayed by the Customer.
- 5.2 Following completion of the acceptance test, the Customer shall without delay give written acceptance of the service or partial service insofar as the service or partial service is free of any



significant defects. The object is free of any material defects if at the time of transfer of risk its condition is as based on the accepted Offer or agreed in the Contract or, insofar as a condition has not been agreed, if the suitability of the article for usage in accordance with the accepted Offer or as prescribed by the Contract is not insignificantly diminished ("acceptance-preventive defects"). The Customer shall prepare an acceptance report that is to be signed by both Partners to the Contract. The Partners to the Contract shall include all defects of the service or partial service provided by OpenLimit in the acceptance report.

- 5.3 Should any acceptance-preventive defects for which OpenLimit is at fault be identified during the acceptance test and recorded in the acceptance report, OpenLimit shall remedy such defects at no cost within a reasonable period of time.
- 5.4 The Customer shall assist OpenLimit to the best of its ability in remedying the defect, and in particular shall provide all available documents, error logs and other documentation as required by OpenLimit for an analysis of the defect and/or to remedy the same. The Customer shall accord OpenLimit reasonable time and opportunity to perform the reworking.
- 5.5 Following the attempt to rework the defect, the Partners to the Contract shall continue with the acceptance testing in accordance with the aforementioned provision. Should OpenLimit, despite having been accorded a reasonable period of time for remedying purposes, fail to remedy an acceptance-preventive defect for which OpenLimit is at fault, or should OpenLimit undertake no further remedying action due to disproportionately high costs, with regard to the defective part of the service or partial service the Customer may withdraw from the accepted Offer or rescind the Contract or insofar reduce the remuneration appropriately. All other or more extensive claims and rights on the part of the Customer are excluded.
- 5.6 Should the Customer fail to acknowledge acceptance for any other reason than due to an acceptance-preventive defect for which OpenLimit is at fault, the respective services or partial services shall be deemed to have been accepted four weeks after OpenLimit has handed over the service or partial service or declared their completion. Furthermore, the respective services or partial services shall be deemed to have been accepted insofar as they have been put into productive operation at the Customer or services (in particular software) have been sold by the Customer to end customers.

## 6. Remuneration

- 6.1 OpenLimit provides services according to expense or for fixed prices. OpenLimit shall state the cost types and rates in the Offer.
- 6.2 Invoicing shall take place monthly in the case of remuneration according to expense, or, in the case of fixed prices, following provision of the services or according to the terms of a payment plan insofar as such a plan has been agreed. Invoices are to be paid within 30 days of receipt.
- 6.3 Travel costs, travel times, accommodation costs and expenses shall be invoiced separately.
- 6.4 All prices are net amounts, i.e. they always exclude value-added tax and/or other fiscal fees/taxes, as well as any reductions whatsoever based on currency control restrictions, or any other withholdings.
- 6.5 The Customer hereby declares his agreement that he is not authorised to retain any due payments to OpenLimit as part of offsettings, any other counterclaims or similar part-payments.

## 7. Service disruptions

- 7.1 Should services not be provided or not be provided according to the terms of the Contract or be provided incorrectly due to circumstances for which OpenLimit is responsible, OpenLimit shall be obliged to provide these services within a reasonable period of time according to the terms of the Contract, if and insofar as the Customer submits a written complaint without delay and at most within two weeks following provision of the service. Should this not succeed, the Customer shall have the right to reduce the remuneration for the service by a reasonable amount or to withdraw from the accepted Offer or to rescind the Contract.
- 7.2 Insofar as the services display a defect for which a complaint is submitted by the Customer within a time limit of twelve months following the respective acceptance by the Customer, OpenLimit shall rework such services within a reasonable period of time. This is subject to the Customer providing OpenLimit with notification without delay upon discovery of the defect. Should it be established upon investigation that a defect does not exist, OpenLimit can demand recompense for work carried out together with any necessary expenses in accordance with the generally valid rates.

- 7.3 In the event of a withdrawal from the accepted Offer or from the Contract, OpenLimit is entitled to remuneration for the services provided under the terms of the Contract until such time as termination takes effect. Remuneration shall not become due solely for such services where the Customer can prove within two weeks following termination that these are of no use to him and are therefore of no interest.
- 7.4 Foregoing claims and rights regarding defects shall not apply in the case of an insignificant deviation from the condition or usability as agreed in an enclosure to the respective individual agreement, as well as in the case of non-reproducible software errors. Responsibility for defects is excluded with regard to a service or partial service that has been modified by the Customer, even if a defect occurs in an unmodified part, unless the Customer is able to prove that the modifications do not have any causative connection with the defect that has occurred.
- 7.5 Should the Customer accept the defective object despite being aware of the defect, or if the Customer should have been aware of it, he shall only be entitled to claims for defects if he reserves the rights.
- 7.6 More extensive claims on the part of the Customer due to service interruptions as well as claims for damages or recompense for expenses due to the defective nature of the service - irrespective of the legal justification - shall be excluded insofar as legally permissible.

## 8. Liability

- 8.1 Liability on the part of OpenLimit shall be limited to a sum amounting to 50% of the remuneration, but to a maximum of €50,000.00, irrespective of the legal justification.
- 8.2 OpenLimit shall not be liable for damage, delays or service impediments that lie outside the scope of responsibility of OpenLimit, or for damage that is to be attributed to unsuitable, incorrect or improper usage of the service. OpenLimit shall furthermore not be liable for minor negligence, indirect damage or consequential damage or loss in conjunction with the service.
- 8.3 The exceptions and limitations of liability and with regard to service disruptions as set down in the aforementioned shall only apply to the respective legally permitted extent.

## 9. Limitation

Liability claims and claims arising from service disruptions shall be barred by limitation one year from the time when the Customer became aware of the circumstances forming the reason for the claim, or from such time as the Customer should have become aware of the fact without any gross negligence, but at the latest two years after the occurrence of the event forming the reason for the claim.

## 10. Rights to work results

Upon full payment of the agreed remuneration the Customer shall acquire the non-exclusive and non-transferable right to use the work results within the framework, and for the purposes, of the accepted Offer or corresponding agreement. Deviations from this regulation of use must be made the subject of a separate written agreement. OpenLimit reserves the right to make identical work results available to third parties without the approval of the Customer.

## 11. Data protection

- 11.1 The Parties are obliged to observe the pertinent data protection regulations and only to use personal data for the purposes as agreed in the Contract. In particular, the employees of both Parties are to be placed under obligation to keep strictly confidential towards any other person all personal data and other information of which they should gain knowledge as the result, or during the course, of activities performed on behalf of the Parties to this Contract.
- 11.2 Before passing on personal data to OpenLimit, the Customer shall be obliged where applicable to inform the persons concerned or to acquire their approval where necessary.

## 12. Confidentiality

Both Parties acknowledge that the contents and in particular the financial details of this Contract are confidential and agree to take every precaution necessary to reasonably assure the safeguarding of this confidentiality unless a corresponding disclosure is required by law. The obligations of secrecy on the part of the Parties within the scope of this Contract shall continue to remain in effect following the expiry date or premature termination of this Contract. The employees of the Parties or any third parties who may be engaged are to be placed under an obligation of confidentiality accordingly.

## 13. Termination of the contractual relationship

- 13.1 The contractual relationship can be terminated at any time by both Parties subject to a period of notice of three months. The right to extraordinary and immediate termination for important reasons remains unaffected.
- 13.2 In the event of termination, the remuneration shall be calculated on the basis of the services provided.

## 14. Applicable law and venue

- 14.1 This Contract is subject to Swiss material law.
- 14.2 The courts of law at the statutory place of business of the Provider are solely responsible for passing judgement on all disputes arising from, or connected with, this Agreement and any single business deals concluded on the basis of this Agreement.