

General Terms and Conditions of neo42 GmbH for Services

§ 1 General

(1) The General Terms and Conditions set out below apply to all services provided by neo42 GmbH (hereinafter abbreviated to “neo42”), in particular consultation, installation, modification or operation of software purchased by the Customer. They shall apply insofar as the Customer is a merchant within the meaning of the German Commercial Code (HGB), including all future business relationships even if they are not expressly agreed again. The nature and scope of the respective services owed shall be agreed in separate contracts.

(2) Deviations from these General Terms and Conditions shall only be effective if confirmed by neo42 in writing.

(3) Employees of neo42 are not authorised to enter into verbal ancillary agreements or to give verbal assurances that go beyond the content of the respective contract, including these General Terms and Conditions.

(4) The offers of neo42 are aimed exclusively at companies within the meaning of Section 14 of the German Civil Code (BGB), i.e. any natural or legal person or business partnership with legal capacity which acts in pursuance of its professional activities as a trader or self-employed person when concluding a legal transaction. They alone are customers within the meaning of these General Terms and Conditions.

(5) Any changes to these General Terms and Conditions shall be communicated to the Customer in writing or by email. If the Customer does not object to such changes within four weeks of receiving notification thereof, they shall be deemed accepted. The Customer’s attention is specifically drawn to its right of objection and the legal consequences of inaction whenever changes are made to these General Terms and Conditions.

§ 2 Subject Matter of the Contract

(1) neo42 shall provide all services exclusively on the basis of the provisions of this agreement and the respective individual contract concluded in relation to the respective service.

(2) The scope of the service and payment information are set forth in the respective service offer. Unless expressly specified otherwise in the service offer, neo42 shall not be responsible for the respective project and/or its success. This shall be the responsibility of the Customer. neo42 shall be obliged, however, to provide the service to the best of its knowledge and judgement and in accordance with the basic principles of proper professional practice.

§ 3 Conclusion of Contract / Commitment Period

(1) The offers created by us shall be binding for a period of 14 days. If, when placing an order, the Customer refers to a previous offer, this shall be regarded as a submission of a new offer by the Customer, which will be checked by us.

(2) Customer orders, in all other cases, shall always constitute a binding offer for the Customer to neo42 for conclusion of a contract. For neo42, however, orders shall only and solely become binding, with respect to their scope and content, upon written confirmation.

(3) In all other respects, a contract shall only be concluded if neo42 performs the agreed service or acceptance of the order is confirmed to the Customer in text form by way of a separate communication.

§ 4 Working Hours and Surcharges

(1) Unless specified otherwise in an individual contract, all daily rates valid for the term of the respective agreements shall be based on a standard working day of eight hours between the hours of 8 a.m. and 6 p.m. at the headquarters of neo42.

(2) A surcharge of 50% of the regular daily/hourly rates shall be applied to any services performed after 6 p.m. to 8 a.m. or on Saturdays. A surcharge of 100% of the regular daily/hourly rates shall be applied to any services performed on Sundays or public holidays (depending on the location of neo42). The surcharges are strictly net in relation to the agreed daily/hourly rates.

§ 5 Calculation / Cancellation / Travel Times

(1) Our respective offer is the basis for payment of the service. Unless the application of VAT is expressly indicated in the offer, the statutory VAT valid at the time of service provision shall be added to the payment information contained in the offer.

(2) If, at the request or under the responsibility of the Customer, an agreed date for the provision of a service must be postponed or cancelled, the following shall apply:

(2.1) If a service date jointly agreed with the Customer, which would need to be performed on just one working day, fails to materialise for reasons attributable to the Customer and said date was not cancelled or postponed beforehand, the Customer shall be charged 100% of the costs of the service date for the first day of the planned assignment.

If the consulting date agreed as binding with the Customer fails to materialise on the day of service provision because neo42 does not have access to the Customer's facilities, the relevant employee of the Customer required to participate in the consultation is not present or the Customer fails to perform its other duties to cooperate and, as a result, neo42 is prevented from being able to properly provide the service owed, the Customer shall be charged 100% of the service agreed for this day.

(2.2) Scheduled assignments for consulting services with a duration of up to two working days maximum can be cancelled or postponed by the Customer up to five working days before the planned start of the first consulting day. In such cases, the Customer shall cover, at most, any travel or accommodation expenses that have already been incurred and cannot be refunded. If the planned date is cancelled or postponed at a later point in time by the Customer, neo42 shall be entitled to charge 50% of the agreed payment as compensation.

(2.3) Scheduled assignments for consulting services with a duration of up to two or more working days can be cancelled or postponed by the Customer up to 10 working days before the planned start of the first consulting day. In such cases, the Customer shall cover, at most, any travel or accommodation expenses that have already been incurred and cannot be refunded. If the planned date is cancelled or postponed at a later point in time by the Customer, neo42 shall be entitled to charge 50% of the agreed payment as compensation.

(2.4) In all of the aforementioned cases, the Customer shall be entitled to prove that neo42 did not incur any or only minimal losses.

(3) Travel time shall be regarded as working time in the context of the offer. Our respective offer is the basis for payment of travel and subsistence expenses. Unless agreed otherwise, travel and subsistence expenses shall be reimbursed by the Customer upon presentation of proof, in addition to the agreed remuneration.

§ 6 Payment / Default / Right of Retention

(1) Unless expressly agreed otherwise, invoices must be paid 10 days following provision of the service and invoicing without deductions.

(2) If the Customer defaults on payment or if we have justified doubts about the Customer's ability to pay – without prejudice to our other rights – we shall be entitled to demand advance payment for services not yet performed, to revoke any payment terms previously granted and to declare all claims arising from the business relationship as immediately payable. Our obligation to provide the service shall be suspended for as long as the Customer remains in default of payment. The defaulting Customer shall be required to reimburse us for all appropriate dunning, collection and information costs.

(3) A right of retention shall only apply to the Customer for claims arising from the same contractual relationship.

§ 7 Duties to Cooperate

- (1) Where required for the implementation of the contract, the Customer shall provide us with all information and materials available to it and create all the conditions necessary for us to provide our service within its sphere of control.
- (2) Where the service is performed at the Customer's operating facilities, it shall provide us with sufficient working space free of charge and grant us access to the required IT systems.
- (3) When providing our service, we rely on the Customer's ability to fulfil its duties to cooperate. If it fails to do so and this results in delays and/or extra effort, we may demand a change to the payment terms and to the schedule – if one has been agreed.
- (4) The Customer shall itself be responsible for establishing and maintaining an adequate Internet connection.

§ 8 Force Majeure

Unforeseeable disruptions to operations, such as strikes, lockouts, pandemics, unrest, official orders and other cases of force majeure, shall release us from our obligation to provide our services for the duration of the disruption and to the extent of its effect. If provision of the service is delayed by more than a month as a result, this shall entitle each of the Parties, under exclusion of all further claims, to terminate the contract with respect to the affected service.

§ 9 Rights of Use

Unless agreed otherwise in specific terms, the Customer shall only receive a simple, non-exclusive right to use the services provided or performed by neo42 as part of this agreement, unlimited with respect to time, location and content, within the scope of the respective purpose of the contract.

§ 10 Liability

- (1) neo42 shall have unlimited liability, in accordance with the statutory provisions, for damage to life, body and health due to a negligent or intentional breach of duty by neo42, its legal representatives and vicarious agents, and for loss or damage covered by liability under the Product Liability Act. neo42 shall be liable, in accordance with the statutory provisions, for loss or damage not covered by sentence 1 and which is due to intentional or grossly negligent breaches of contract as well as dishonesty by neo42, its legal representatives or vicarious agents. For loss or damage due to the absence of a warranted quality, not arising directly from the service result, neo42 shall only be liable if the risk of such loss or damage is evident from the warranty of quality.
- (2) neo42 shall also be liable for loss or damage caused by ordinary negligence insofar as the loss or damage arising in this way is due to a breach of rights to be granted to the Customer in accordance with the content and purpose of the relevant contract and/or insofar as the loss or damage arising in this way is due to a breach of duty, the fulfilment of which is essential for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely (cardinal duties).
- (3) Any further liability shall be excluded irrespective of the legal nature of the claim asserted. In particular, liability shall be excluded in the event of attaining a specific result.
- (4) In the event of loss of data and programs and their restoration, neo42 shall be liable only as outlined above and insofar as this loss could not have been avoided by appropriate precautionary measures by the Customer, in particular by creating daily backups of all data and programs.

§ 11 Data Protection

- (1) We comply with the regulations of data protection laws and take the protection of personal data seriously in the interest of the Customer. We use personal data for the sole purpose of implementing the contracts concluded with the Customer. All customer data is stored and processed by us in compliance with the relevant regulations of the Federal
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Data Protection Act (BDSG), the General Data Protection Regulation (GDPR), other data protection laws that apply in Member States of the European Union, and other provisions associated with data protection.

(2) As a matter of principle, we collect and use personal data of our customers and business partners only insofar as necessary for fulfilment of the contract. Personal data is regularly collected and used only after consent has been obtained from the relevant person. An exception is made in cases where there are objective reasons making it impossible to obtain consent in advance and where processing of the data is permitted by other statutory regulations.

(3) In cases where we require access to further data or systems of the Customer in order to execute orders, or data from clients or business partners of the Customer is communicated to us or can be viewed by us, we shall conclude a separate data processing agreement with the Customer in accordance with Article 28 GDPR before the start of the order.

§ 12 Rights of Third Parties

The Customer warrants that it has obtained all the necessary permissions to allow neo42 access to its systems, provided that this is necessary for the performance of the respective services owed. The Customer shall provide written proof to neo42 on request that it has the corresponding authorisations. The Customer shall indemnify neo42 against all claims, in particular claims for damages, fees and costs, including all legal fees, based on judicial or extrajudicial disputes as a result of actual or alleged violations of third-party rights, provided that the (alleged, as the case may be) legal violation is based on information, instructions, data or materials of the Customer. neo42 shall be entitled to participate in the defence against any claims of third parties both in judicial and extra judicial proceedings.

§ 13 Place of Performance and Jurisdiction

(1) The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on the International Sale of Goods is expressly excluded.

(2) The place of performance is the headquarters of neo42.

(3) Where legally compatible, jurisdiction for all legal disputes between the Parties shall be the headquarters of neo42.

(4) The assignment of rights and obligations by the Customer to a third party shall require the written consent of neo42.

§ 14 Final Provisions

(1) These General Terms and Conditions, together with the individual contracts agreed between the Parties, make up the entire contractual agreement. In the event of any conflicts between these General Terms and Conditions and the provisions of an individual contract, the provisions of the respective individual contract shall prevail.

(2) General Terms and Conditions of the Customer, which contradict these provisions, shall not apply. Their validity is expressly excluded by the Contracting Parties.

(3) If individual or multiple provisions contained in these General Terms and Conditions are or prove to be ineffective or void, or if a loophole is found in these General Terms and Conditions, this shall not affect the effectiveness or validity of the remaining provisions. In such cases, the Contracting Parties shall replace the ineffective or void provisions with legally effective provisions that come closest to the purpose intended in the ineffective or void provisions.