

# General Terms and Conditions

## DEFACTO Engage GmbH hereinafter referred to as "DEFACTO"

### 1. SCOPE OF APPLICATION/APPLICABILITY OF THE GTC 1.1

These GTC apply to all contracts between DEFACTO and its clients. The GTC also apply to all additional and supplementary orders, requested adjustments, as well as to all future services or offers, even if they are not separately agreed again.

1.2 Deviating general terms and conditions of the contractual partner do not apply, even if DEFACTO has not explicitly objected to their validity in individual cases. Even if DEFACTO refers to a letter which contains or refers to terms and conditions of the contractual partner or a third party, this does not constitute an agreement to the applicability of those terms and conditions. The same applies to the acceptance of services or payments.

### 2. OFFERS, CONCLUSION OF CONTRACT AND CHANGES

2.1 Declarations of intent aimed at the conclusion of contracts must at least be in text form in accordance with section 126 b German Civil Code ("BGB") in order to be effective. Insofar as different agreements and arrangements have been made in individual cases, details of these must be confirmed immediately in text form (section 126 b BGB).

2.2 An offer is valid for two weeks after receipt, unless expressly agreed otherwise.

2.3 Amendments and supplements to this contract must be made in text form unless another form is mandatory. This shall also apply to any amendment or repeal of this text form clause.

2.4 If the contractual partner requests a change from DEFACTO which is necessary to achieve an agreed work result ("Werkvertrag"), the contractual partners shall seek agreement on the change and the additional or reduced remuneration to be paid as a result of the change. DEFACTO is obliged to make an offer for the additional or reduced remuneration.

2.5 If the contractual partner requests any other change of the agreed work result from DEFACTO, the contractual partners shall seek agreement on the change and the additional or reduced remuneration to be paid as a result of the change. DEFACTO is obliged to make an offer for the additional or reduced remuneration, but this only applies if DEFACTO can reasonably be expected to carry out the change.

### 3. OFFER ESTIMATE

Any offer estimates on the part of DEFACTO are always subject to change and do not claim to be complete. They only present a possible execution of the contract without any claim to completeness or correctness.

### 4. VICARIOUS AGENTS AND SUBCONTRACTORS

DEFACTO has the right to use subcontractors to fulfil its contractual obligations. The selection of subcontractors shall be made at DEFACTO's reasonable discretion in compliance with all applicable laws. This does not apply if the contractual partner has a legitimate interest that the service is not provided by a specific subcontractor or if the parties have agreed that DEFACTO perform the contract in person. The contractual partner may demand the removal of the subcontractor for good cause at any time.

### 5. DUTY TO COOPERATE

The contractual partner shall be obliged to cooperate appropriately. It shall behave in such a way that the purpose of the contract can be realized. If the contractual partner culpably violates its obligations to cooperate, agreed performance deadlines of DEFACTO are extended by an appropriate period of time.

### 6. REMUNERATION

6.1 Prices quoted by DEFACTO are in the EURO currency and are exclusive of VAT.

6.2 Unless otherwise agreed in the individual contract, the calculation of the remuneration shall be based on daily rates. A daily rate corresponds to 8.0 hours during regular business hours between 08:00 and 18:00 for an employee or subcontractor. The relevant time zone is Central European Time (Berlin). Pro rata daily rates are recorded and billed to the minute. Travel times are considered working times and are invoiced at the daily rates agreed in the respective individual contract.

6.3 Travel costs will be invoiced separately by DEFACTO according to actual expenditure. DEFACTO may select the means of travel at its reasonable discretion. When using a motor vehicle, the amount of travel expenses per motor vehicle used is the rate according to section 9 subsection 1 sentence 3 no. 4 sentence 8 German Income Tax Code ("EStG"), as amended from time to time, without the respective maximum limit.

6.4 Expenses are settled in addition to the daily rates and travel expenses according to the rates pursuant to section 9 subsection 4 a EStG, as amended from time to time.

6.5 Bank account details may only be changed by telephone or following a confirmation by telephone in order to avoid phishing.

6.6 Unless otherwise agreed in the individual contract, services of DEFACTO are immediately due for payment.

6.7 Unless otherwise agreed in the individual contract, services of the contractual partner shall be paid within 14 days after an invoice has been issued to DEFACTO. Invoices are issued on a calendar month basis.

### 7. RIGHTS OF RETENTION AND OFFSETTING

7.1 Rights of retention are excluded unless regarding claims which are undisputed or have been established by a court of law in a final and binding manner.

7.2 Any offsetting is excluded unless with claims which are undisputed or have been established by a court of law in a final and binding manner.

### 8. PROJECT PHASES

8.1 The times defined in the individual contract for the fulfilment of the individual project phases shall be extended if the contractual partner fails to fulfil its contractual obligations to cooperate under the individual contract or under clause 5 above and thus prevents the achievement of the respective project phase goal. The obligation to achieve a goal shall be postponed by the time the client fails to cooperate.

8.2 In the event of force majeure, performance dates shall be extended by the period of time for which the force majeure lasts.

### 9. TERMINATION AND TERM

9.1 If a continuing obligation exists and no fixed term is defined in the individual contract, the contracts run for an indefinite period.

9.2 Contracts in terms of clause 2 above may be terminated by either party giving one month's notice. Termination for reasons according to sections 626, 314, 627 BGB shall remain unaffected. Notice of termination must be given in written form.

9.3 If the contractual partner culpably violates its main contractual obligations, DEFACTO has the right to terminate the continuing obligation with immediate effect.

9.4 Work- and business-related documents as well as other working materials provided by DEFACTO shall be returned immediately and without request after termination of the contract or shall be deleted. There is no right to assert a right of retention in that regard. Electronic data shall be deleted completely. Excluded from this are documents and data in relation to which there is a longer statutory retention obligation, but only until the end of the respective retention period. The contractual partner shall confirm the deletion in writing to DEFACTO upon request.

### 10. ACCEPTANCE

Any acceptance required shall be carried out in accordance with the provisions of the individual contract, otherwise in accordance with the statutory provisions.

### 11. FORCE MAJEURE

In case of extraordinary events such as war, pandemic or similar, which would lead to a claim for adjustment of the contract according to section 313 subsection 1, subsection 2 BGB, the following allocation of risk shall apply: DEFACTO bears the risk for the performance of the service, the contractual partner bears the risk for the use of the service.

### 12. EXCLUSION OF LIABILITY

12.1 Claims of the contractual Partner for damages against DEFACTO shall be excluded. Excluded from this are claims for damages of the contractual partner from injury to life, body, health or from the breach of material contractual obligations (cardinal obligations) as well as liability for other loss or damage based on an intentional or grossly negligent breach of duty by DEFACTO, its legal representatives or vicarious agents. Material contractual obligations are those whose fulfilment is necessary to achieve the goal of the contract.

12.2 In the event of a breach of material contractual obligations, DEFACTO shall only be liable for the foreseeable loss or damage typical for the contract if such loss or damage was caused by simple negligence unless the contractual partner's claims for damages are based on injury to life, body or health.

12.3 The restrictions laid down in clause 12.1 and 12.2 shall also apply in favour of DEFACTO's legal representatives and vicarious agents if claims are asserted directly against them.

12.4 The limitations of liability resulting from clauses 12.1 and 12.2 do not apply insofar as DEFACTO has fraudulently concealed the defect or has given a guarantee for the quality of the item. The same applies as far as DEFACTO and the contractual partner have made an agreement about the quality of the item. The provisions of the German Product Liability Act ("Produkthaftungsgesetz") shall remain unaffected.

12.5 DEFACTO is not liable for the loss of data as far as the loss of data is based on the fact that the contractual partner has omitted to carry out adequate and reasonable data backups to ensure that lost data can be restored with reasonable effort.

### 13. TRADEMARKS AND COPYRIGHT

13.1 The contractual partner grants DEFACTO a simple licence to use its protected trademarks and business designations for implementation in the desired end product. This includes in particular the printing of the contractual partner's trademark. If the contractual partner is not the owner of the trademark or the business designation according to sections 14, 15 German Trademark Act ("Markengesetz"), it shall take steps to ensure that the owner grants DEFACTO the necessary rights of use to fulfil the purpose of the contract.

13.2 Work results are all works created by the activities of DEFACTO within the scope of the individual contract, in particular the contractual software, the documentation and all associated design materials.

13.3 For the duration of the contractual term, DEFACTO grants the contractual partner the geographically unrestricted, simple right to all known and unknown types of use with regard to the work results at the time of their creation. The scope of the right of use is derived from the main performance obligations according to the individual contract.

13.4 To the extent that DEFACTO uses open-source software with a copyleft licence for the fulfilment of the contract, the copyright provisions of the respective open-source terms and conditions of use apply. Computer programs, which are developed or used by means of open source, are expressly marked with reference to the respective terms and conditions of use. For this purpose, the abbreviated name and a reference to the respective set of rules (GPL License, Apache License, etc.) is sufficient.

13.5 The contractual partner has no claim to the source code unless it is expressly agreed otherwise in the individual contract. DEFACTO owes only the machine code.

### 14. CONFIDENTIALITY

14.1 "Confidential Information" shall mean all information and documents of the respective other party which are marked as confidential or which must be regarded as confidential from the circumstances, in particular information on operational processes, business relations and know-how, as well as all work results.

14.2 The parties agree to maintain confidentiality about such Confidential Information.

14.3 The parties shall only grant access to Confidential Information to consultants who are subject to professional secrecy or who have previously been placed under obligations corresponding to the confidentiality obligations of this contract. Furthermore, the parties shall disclose the Confidential Information only to those employees who need to know it for the performance of this contract and shall also oblige such employees to maintain confidentiality to the extent permitted by employment law for the period after their departure.

### 15. FINAL PROVISIONS

15.1 The exclusive place of jurisdiction for all disputes arising out of and in connection with this contract – including disputes concerning the validity of this contract itself – shall be Erlangen, Germany.

15.2 Should any provision of this contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. The parties undertake to replace the invalid or unenforceable provision with a valid provision that most closely reflects the economic intent. The same shall apply in the event of an unintentional loophole requiring regulation. The same shall also apply if the legal invalidity of an agreement/provision is based on a measure of performance (period) or time (deadline) prescribed in this contract. In this case, a legally permissible measure of performance or time which most closely reflects what was intended shall be deemed to have been agreed.