

General Terms and Conditions of One Unity Consulting GmbH & Co. KG Status as of 07/2016

A) Common Provisions for all Agreements Concluded with One Unity Consulting GmbH & Co. KG

Section 1 Scope of Application

- (1) The present General Terms and Conditions (GTC) shall apply to all contractual relationships concluded between One Unity Consulting GmbH & Co. KG (hereinafter also referred to as OUC) and its contracting partners (hereinafter also referred to as "Contracting Partner", "Licensee" and/or "Customer"). The GTC shall apply only if the respective Contracting Partner is an entrepreneur (Section 14 German Civil Code [*Bürgerliches Gesetzbuch - BGB*]), a legal entity under public law or a special fund under public law.
- (2) The GTC shall apply, in particular, to the surrender of any software, to the conclusion of any software service agreement as well as to the provision of any works and/or other services. Unless agreed upon otherwise, the GTC shall apply as a framework agreement in the current version at the time the agreement is concluded and/or, in any case, in the last version communicated to the Contracting Partner in text form and shall also apply to any equivalent future agreements, without we being obliged to point out to them again in each individual case.
- (3) The GTC shall apply exclusively. Any deviating, conflicting or complementing General Terms and Provisions of the Contracting Partner shall become an integral part of the agreement only if and to the extent that OUC has explicitly given its consent to their application. Such requirement of consent shall apply in any case, including, but not limited to, in those cases where OUC carries out the delivery to the Contracting Partner while being aware of the GTC of the Contracting Partner.
- (4) Any individual arrangements made with the Contracting Partner in the individual case (including any framework and/or additional arrangements, ancillary arrangements, amendments and modifications) shall take precedence over the present GTC in any case. Subject to evidence to the contrary, a written agreement and/or the written confirmation of OUC shall be authoritative for the contents of any such arrangements.
- (5) Any legally relevant declarations and notices to be made by the Contracting Partner vis-à-vis OUC after the conclusion of the agreement (for ex. setting of time limits, notices of defects, declaration of withdrawal or price reduction) shall require written form to become effective.
- (6) Any references to the application of any statutory regulations shall only have clarifying significance. As a result, the statutory regulations shall also apply without any such clarification, unless they are directly amended or explicitly excluded in the present GTC.

Section 2 Conclusion of the Agreement

- (1) Any offers of OUC shall be subject to change and non-binding. The same shall also apply if OUC has surrendered to the Contracting Partner any catalogs, technical documentation, white papers, any other product descriptions or documents, including in electronic form, to which OUC has reserved the rights of ownership and copyrights.
- (2) To the extent that any order placed by the Contracting Partner is not based on any offer of OUC, ordering of the licenses by the Contracting Partner shall be regarded as a binding contractual offer. Unless otherwise provided for in the purchase order, OUC shall be entitled to accept such contractual offer within a period of ten (10) workdays following its date of receipt by OUC.
- (3) Acceptance may be declared either in written or text form (for ex. by means of an order confirmation) or by delivery of the licenses to the Contracting Partner.

Section 3 Fulfillment of the Agreement

- (1) OUC shall be entitled to render the support services by way of remote maintenance or a remote diagnosis, provided that this does not constitute a substantial disadvantage for the Contracting Partner, in particular if this does not exceed the time frame acceptable for any provision of the corresponding support services on site, there are not risks in terms of IT security and the technical requirements are in place on the premises of the Contracting Partner.
- (2) OUC shall render its services in compliance with the current state of the art at the time the agreement is concluded and shall make use of staff who shall be qualified in the provision of the services agreed upon. The Contracting Partner shall not be entitled to claim any specific individuals and/or any specific professional degree of the executing staff of OUC.
- (3) Unless stipulated otherwise by the parties to the present agreement, the services shall be carried out by OUC during the usual business hours of OUC on workdays (except for Saturdays and public holidays).
- (4) Unless agreed upon otherwise in the individual case, any specific outcomes shall not be owed.
- (5) OUC shall have the right to make use of subcontractors for the fulfillment of the agreements concluded with the Contracting Partner.

Section 4 Remuneration

- (1) Unless anything to the contrary has been agreed upon, any remuneration agreed upon in the agreement on a time and material basis shall be regarded as the consideration for the time expenditure spent for the contractual services. Any material expenditure (ancillary costs) shall become subject to a separate remuneration. Any waiting times of the Customer for which the Contractor is responsible shall be remunerated like working hours.
- (2) Unless anything to the contrary has been agreed upon, settlement of accounts shall be effected according to time expenditure (hours). Unless provided for otherwise in the purchase order, the respective applicable hourly and/or daily rates of OUC shall apply. Such rates may be consulted in the knowledge management. The Customer shall agree to such regulation.
- (3) Unless anything to the contrary has been agreed upon, OUC shall draw up weekly invoices in hindsight. Any remuneration on a time and material basis shall be paid after receipt of an auditable invoice and of the proof of performance drawn up by OUC.
- (4) Any travel times, travel expenses and ancillary costs shall be remunerated in accordance with the contractual arrangements; this shall also apply to any arrival and departure.
Unless agreed upon otherwise, any travel times shall be remunerated at 50% of the working time of the respective employee. The travel times shall be calculated using an Internet-based route planner (standard settings), with the place of departure and/or destination being the registered office of OUC. Unless anything to the contrary has been agreed upon, any travel expenses incurred using a passenger car shall be accounted for at € 0.50 per kilometer, with the distance being calculated using an Internet-based route planner (standard settings). Any flight costs (economy class) and travelling expenses incurred while travelling by train (2nd class) shall be reimbursed by the Customer on production of proof. The Contractor reserves the right to select of the most cost-efficient means of transport. OUC shall be obliged to calculate the travelling expenses on the basis of the respective shortest distances and to make such trips where the costs are unreasonable in relation to the total fee only with the explicit approval of the Customer. Any accommodation expenses shall be reimbursed to the Contractor in the proven amount; any out-of-pocket expenses shall be reimbursed in accordance with the maximum tax rates. To the extent that travel expenses are incurred for two or more individuals at the same time and for the same order, such expenses shall be invoiced only for one individual.
- (5) To the extent that the Contracting Partner comes into default in payment, the outstanding amount shall bear interest at nine (9) percentage points above the respective applicable base interest rate. The assertion of any further rights shall remain unaffected in this respect.
- (6) Any payments on account shall become due without undue delay upon invoicing.
- (7) In each case, the remuneration shall be due upon invoicing, without deduction.
- (8) However, OUC shall be entitled at any time, also within the framework of any ongoing business relationship, to render its services, either in whole or in part, only against prepayment. Any corresponding reservation shall be declared upon receipt of the order confirmation at the latest.
- (9) Subject to any explicitly deviating regulation, any and all of the amounts specified by OUC shall be deemed to be net amounts, i.e. they shall be subject to the statutory value added tax.

Section 5 Data Protection

The parties to the present agreement shall observe the relevant data protection regulations. In particular, OUC shall collect, process or use any personal data of the Contracting Partner within the meaning of Section 11 Para. 3 German Federal Data Protection Act [*Bundesdatenschutzgesetz - BDSG*] only within the framework of its instructions. The Contracting Partner shall be deemed to agree to such collection, processing or use. The parties to the present agreement shall oblige their employees to maintain data secrecy in accordance with Section 5 German Federal Data Protection Act [*BDSG*].

Section 6 Confidentiality Obligation

- (1) The parties shall be obligated to treat confidential any confidential information of which they gain any knowledge during the implementation of the present agreement and to use such information only for the purposes contractually agreed upon. Confidential information within the meaning of this provision shall include any information, document, specification and data that has been designated as such or has to be regarded as being confidential by its very nature. OUC shall be obligated to grant access to any confidential information of the Customer only to such employees who have been entrusted with the task of providing services within the framework of the present agreement. Both parties shall be obliged, upon request of the respective other party, to have their employees undersign a corresponding declaration of commitment and to submit such declaration to the respective other party. The parties shall not make any efforts for any property rights applications for any confidential information of the respective other party.
- (2) In the event that any public body requests any confidential information within the meaning referred to above, such party shall be informed without undue delay, in any case, however, before the information is disclosed to the public body.
- (3) The rights and obligations in accordance with para. (1) and para. (2) shall not be affected by any termination of the present agreement. Both parties shall be obliged, at the option of the respective other party, to return or destroy any confidential information of such other party upon termination of the present agreement, unless such information has been properly used up.

Section 7 Claims in Case of Material Defects

- (1) To the extent that any updates, upgrades, new program versions or any other objects of purchase or works services are delivered or rendered to the Customer within the framework of the software service agreement, the claims based on defects with regard to such innovations contained therein that do not constitute mere troubleshooting shall be governed by the paragraphs (2) to (9) below. For any software programs surrendered by OUC for use, the claims based on defects on the part of the Customer shall be governed by the paragraphs (2) to (9) below.

(2) The software surrendered by OUC shall essentially correspond to the product description. According to the current state of the art, it shall not be deemed to be possible to create any software free from errors. Within the framework of the software service agreement, any specific outcomes may not be guaranteed. Any claims based on defects shall not be deemed to exist in the case of a merely insignificant deviation from the quality agreed upon or presumed and only in case of a minor impairment to the suitability for use. Any product descriptions shall not be deemed to be a guarantee without any separate written agreement being concluded. If any updates, upgrades or new versions are delivered, the claims based on defects shall be limited to the innovations of the delivery of such updates, upgrades or new versions compared with the previous version status.

(3) In the event that the Customer demands cure on account of any defect, OUC shall have the right to choose between subsequent improvement, replacement delivery or substitute performance. In case that, following the fruitless expiry of a first time limit set, the Customer has granted OUC another reasonable period of grace and such second time limit, too, has lapsed to no avail, or if any reasonable number of attempts made to perform subsequent improvement, replacement delivery or substitute performance has proven to be unsuccessful, the Customer may, at the Customer's option and subject to the prerequisites laid down by law, either terminate and/or withdraw from the agreement or reduce the consideration and claim compensation for damages or reimbursement of expenses. Cure may also be performed by handover or installation of a new program version or execution of a work-around. In the event that the defect does not affect functionality at all or only to an insignificant extent, OUC shall be entitled, to the exclusion of any further claims based on defects, to remedy the defect by delivering a new version or a new update within the framework of its version, update or upgrade planning.

(4) Any defects shall be notified in text form by means of a comprehensible description of the error indications, as far as this is possible, demonstrated through written records, copies or other documents illustrating the defects. The notification of defects shall allow for the error to be reproduced. Any statutory duties of inspection and notification on the part of the Customer shall remain unaffected.

(5) The statute of limitations for any claims based on defects shall be twelve (12) months. The time limit shall start to run upon delivery of the first reproduced version of the subject matter of the license, including the user manual. In case that any updates, upgrades or new versions are delivered, the time limit for these components shall start to run upon the date of the respective delivery.

(6) The Customer shall inspect the objects delivered for any potential transport damage or any other external defects without undue delay, shall gather the corresponding pieces of evidence and shall assign to OUC any potential recourse claims while returning the related documents.

(7) Any claims for compensation for defects shall be subject to the restrictions laid down in section 9.

(8) In the event that the defect is based on the defectiveness of the product of any component supplier and the latter does not become active as an auxiliary agent of OUC, but OUC solely passes on a third-party product to the Customer, the claims based on defects on the part of the Customer shall be limited in the first place to the assignment of the claims based on defects on the part of OUC vis-à-vis its component supplier. This shall not apply if the defect is based on any such improper treatment of the product of the component supplier that is attributable to OUC. In the event that Customer is unable to assert out of court any claims based on defects vis-à-vis the component supplier, the subsidiary liability of OUC for any claims based on defects shall remain unaffected.

(9) Any such modifications and expansions in relation to the services or the items delivered and/or with regard to the updates, upgrades or new versions delivered that the Customer carries out itself or has carried out by any third parties shall result in the claims based on defects on the part of the Customer becoming void, unless the Customer demonstrates that the modification or expansion has not been the cause for the defect. OUC shall not be liable for any such defects that are attributable to any improper operation as well as any operating conditions or the use of any inappropriate operating materials by the Customer either.

Section 8 Claims in Case of Legal Defects

(1) To the extent that any updates, upgrades, new program versions or any other objects of purchase or works services are delivered or rendered to the Customer within the framework of the software service agreement, the claims based on legal defects on the part of the Customer with regard to such innovations contained therein that do not constitute mere troubleshooting shall be governed by the paragraphs (2) to (6) below. For any software programs surrendered by OUC for use, the claims based on legal defects on the part of the Customer shall be governed by the paragraphs (2) to (6) below.

(2) The software delivered and/or surrendered by OUC shall be free from any such third-party rights that prevent it from being used in accordance with the present agreement. This shall not include any retentions of title customary in the trade.

(3) In the event that any third parties are entitled to and assert such rights, OUC shall make any reasonable efforts to defend the software against the asserted rights of third parties at its own expense. The Customer shall notify OUC in writing without undue delay of the assertion of any such rights of third parties and shall grant OUC any and all powers of attorney and authorizations required to defend the software against the asserted rights of third parties.

(4) To the extent that any legal defects exist, OUC (a) shall be entitled, at its option, (i) to alter or replace, by means of lawful measures, any such rights of third parties that affect the use of the software in accordance with the present agreement or (ii) to eliminate their assertion or (iii) to alter or replace the software in such a manner that it will no longer violate any external rights of third parties, provided that and to the extent that this does not result in the owed functionality of the software being significantly affected, and (b) shall be obliged to reimburse the necessary recoverable costs incurred by the Customer within the scope of the prosecution.

(5) In the event that the indemnity in accordance with para. (4) fails within a reasonable period of grace set by the Customer, the Customer may, at the Customer's option and subject to the prerequisites laid down by law, either terminate and/or withdraw from the agreement or reduce the consideration and claim compensation for damages.

(6) Apart from that, section 7 para. 5, 7 and 10 shall apply mutatis mutandis (preceding section).

Section 9 Liability, Compensation for Damages

- (1) OUC shall only be liable in accordance with the following provisions set forth in (a) to (e):
- (a) OUC shall be liable without limitation for any damage caused by OUC, its legal representatives or executive employees by willful intent or gross negligence, as well as for any damage caused by any other auxiliary agents by willful intent; the liability for gross fault by any other auxiliary agents shall be governed by the regulations stipulated in (e) below for slight negligence.
 - (b) OUC shall be liable without limitation for any damage caused by willful intent or negligence from the violation of life, body or health by OUC, its legal representatives or auxiliary agents.
 - (c) OUC shall be liable for any damage caused by the lack of any quality agreed upon up to the amount comprised by the purpose of the quality agreement, provided that such purpose has been apparent to OUC at the time the guarantee commitment has been given.
 - (d) OUC shall be liable for any damage in terms of product liability in accordance with the regulations laid down in the German Product Liability Act [*Produkthaftungsgesetz*].
 - (e) OUC shall be liable for any damage resulting from the violation of any cardinal obligations by OUC, its legal representatives or auxiliary agents; cardinal obligations shall be such essential obligations that form the basis of the agreement, which had been decisive for the conclusion of the agreement and on whose fulfillment the Licensee may rely. In the event that OUC has violated such cardinal obligations in any slightly negligent manner, its liability shall be limited to such amount that had been foreseeable for OUC at the time when the respective service has been rendered.
- (2) OUC shall be liable for the loss of any data only up to such amount that would have been incurred for the restoration of such data, provided that the data has become the object of proper and regular backups.
- (3) Any further liability of OUC in terms of substance shall be excluded.

B) Additional Special Regulations for the Surrender of Software

Section 1 Subject-Matter of the Agreement

The subject matter of the software license agreement ("Agreement") shall be the granting of rights of use and utilization to the software described in the respective offer ("Subject Matter of the License") by OUC (hereinafter also referred to as the "Licensor") to the Licensee.

Section 2 Granting of Rights

(1) The Licensor shall herewith grant the Licensee the simple, non-transferable and non-exclusive right, without any limitation in terms of time and space, to use and reproduce the Subject Matter of the License in accordance with the Agreement and the GTC. The right of use and utilization shall be limited to the purposes of uses specified above ("Purpose of Use").

(2) The right to reproduce the Subject Matter of the License shall be limited to the installation of the Subject Matter of the License on a computer system directly possessed by the Licensee to fulfill the Purpose of Use and to any reproduction required for loading, displaying, running, transferring and storing the Subject Matter of the License, as well as to the right to have a back-up copy of the Subject Matter of the License be made by a person having a right to do so in accordance with Section 69d Para. 2 German Act on Copyright and Related Rights [*Urheberrechtsgesetz - UrhG*].

(3) Any farther-reaching rights of use and utilization to the Subject Matter of the License shall not be granted to the Licensee.

(4) Upon request and to the extent that there is any legitimate interest to do so, the Licensee shall authorize the Licensor or any third party engaged by the Licensor to verify whether the use of the Subject Matter of the License remains within the limits of the rights granted herein; the Licensee shall support the Licensor to the best of the Licensee's efforts during the implementation of any such verification.

Section 3 Handover and Installation of the Subject Matter of the License

(1) The Licensor shall surrender to the Licensee such number of reproduction versions of the Subject Matter of the License in a machine-readable form that is required to exercise the rights of use and utilization granted herein, at its option either on a data carrier customary at that point in time or via remote data transmission. The Licensee shall receive the documentation in the form of an electronic document in the German language, as well as one copy of the user manual for the Subject Matter of the License in the form of an electronic document in the German language. The parties shall agree on the registered office of the Licensor as the place of performance for the handover of the Subject Matter of the License. The Licensee shall bear any and all costs and risks associated with such handover. Upon handover of the Subject Matter of the License, the transport risk (in particular the risk of any accidental loss or destruction) for the copies of the Subject Matter of the License shall pass to the Licensee.

(2) The Licensee shall be responsible for making the system environment available in accordance with the requirements defined by the manufacturer. Unless anything to the contrary has been indicated or agreed upon, such requirements shall, as a matter of principle, always be included in the documentation of the respective software.

(3) The Licensee shall inform the Licensor in writing of the respective places of installation of the copies of the Subject Matter of the License. The same shall also apply to any subsequent modification of the places of installation.

(4) The Licensor retains title to any and all copies of the Subject Matter of the License until the license fees have been paid in full. In case of any violation of the Agreement by the Licensee, in particular in any case of default in payment, the Licensor shall have the right, at the Licensee's expense, to demand return of any and all such copies of the Subject Matter of the License to which the Licensor has retained title or, as far as relevant, to demand assignment of any such rights to which the Licensee is entitled vis-à-vis any third parties. For such a case, the Licensee shall confirm to the Licensor in writing, at the latter's request, that the Licensee has not retained any copies of the Subject Matter of the License and that any and all installations of the Subject Matter of the License have been irrevocably deleted from the systems of the Licensee or of such third party. Before the final transfer of ownership takes place, the Licensee shall dispose of the rights to the Subject Matter of the License only with the prior written consent of the Licensor.

Section 4 Remuneration, Fees

(1) Any license fees for the granting of the rights granted shall be derived from the offer placed by OUC. The license fees (i.e. the purchase price) shall be a one-off payment.

(2) The Licensor shall invoice the license fee in accordance with the payment schedule contained in the offer, as the case may be. To the extent that the offer does not contain any such information and/or no deviating arrangement has been made, 60% of the license fee shall be due for payment upon delivery of the Subject Matter of the License and/or communication of the license key and / or license file and download of the Subject Matter of the License by the Licensee; further 20% of the license fee shall be due for payment upon installation; and further 20% of the license fee shall be due for payment upon acceptance, in each case upon respective invoicing and without deduction.

C) Additional Special Regulations for Service and Consultancy Agreements

Section 1 Nature and Scope of the Services

OUC shall offer additional services. OUC shall render such services in accordance with the arrangements made in the service agreement. Any services rendered under a contract to produce a work shall not be a subject-matter of the Agreement.

Section 2 Remuneration, Due Date

Any fixed price agreed upon in the Agreement shall be regarded as the consideration for all contractual services, unless anything to the contrary has been agreed upon. Unless anything to the contrary has been agreed upon, any fixed price shall become due after the services have been provided in full. A necessary prerequisite for the price becoming due shall be receipt of an invoice. OUC reserves the right to demand payments on account depending on the progress of the provision of services.

D) Final Provisions

(1) The present GTC and the contractual relationship between OUC and the Contracting Partner shall be subject to the laws of the Federal Republic of Germany, to the exclusion of the UN Sales Law.

(2) If the purchaser is a merchant within the meaning of the German Commercial Code [*Handelsgesetzbuch*], a legal entity under public law or a special fund under public law, the exclusive, also international, place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship shall be Augsburg. The same shall also apply if the Contracting Partner is an entrepreneur within the meaning of Section 14 German Civil Code [*BGB*]. However, OUC shall also be entitled in all cases to file legal action either at the place of performance of the delivery obligation in accordance with the present GTC and/or any overriding individual arrangement or at the Contracting Partner's usual place of jurisdiction. Any overriding statutory regulations, in particular on exclusive jurisdictions, shall remain unaffected.