

General Terms and Conditions Destira GmbH

Status: 26.10.2018

1. Scope

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") shall be used by Destira GmbH (hereinafter referred to as "Destira") in business transactions with businesses ("*Unternehmer*") within the meaning of §14 German BGB. All services shall be provided by Destira exclusively based on these GTC. The customer's general terms and conditions shall not apply, even if Destira has not explicitly objected to them.

2 Offer documents, conclusion of the contract and subject of the contract

- 2.1 Offers by Destira shall always be subject to change without notice, unless explicitly stated otherwise in the respective offer. A contract shall only come into existence upon written confirmation of the order by Destira or upon commencement of the execution of the service by Destira.
- 2.2 All property rights and copyrights to the documents and materials (e.g. concepts, presentations, statistics) made available with a view to the conclusion of an individual contract shall remain with their owner and may not be made accessible to third parties without the prior written consent of the party making them available.
- 2.3 The content/condition and scope of the services owed by Destira shall result from the respective offer/individual contract.
- 2.4 All contracts shall be deemed contracts for service ("*Dienstvertrag*") according to § 611 German BGB. Responsibility for the project and success remains with the customer.
- 2.5 The customer shall not be authorized to issue instructions to Destira or the Destira employees involved in the provision of services, except for what has been agreed within the framework of Section 5.5.
- 2.6 As long as Destira is prevented from providing its services by an unforeseeable, extraordinary event, which it cannot avert even by observing reasonable care, agreed deadlines shall be extended at least by the duration of the hindrance. If the provision of services becomes objectively impossible for Destira, Destira shall be released from its contractual service obligations.

3 Duration of contract, remuneration and payment conditions

- 3.1 The contract is valid for the agreed term or scope. If no special agreement has been made on the performance period, Destira shall be entitled to determine the performance period in a binding manner at its reasonable discretion, taking into account the interests of the customer
- 3.2 A withdrawal from the contract is excluded. However, the contract may be terminated for important reasons ("*wichtiger Grund*") by both Destira and the customer, subject to a notice period of two weeks until the end of the month.
- 3.3 Notices of termination are only effective in writing.
- 3.4 The remuneration for the contractual services to be provided by Destira shall generally result from the respective individual contract.

- 3.5 All prices quoted by Destira are net prices subject to addition of the respective statutory VAT rate (currently 19% in Germany).
- 3.6 The services are invoiced monthly and retrospectively on presentation of the incurred efforts, unless otherwise specified in the respective individual contract.
- 3.7 Proof of efforts (e.g. timesheets) shall be deemed to be approved unless the customer objects in detail within 7 working days of receipt and Destira has referred to the fiction of approval in the proof.
- 3.8 Unless otherwise agreed, invoices are payable within 30 days of receipt without deduction.

4 Cooperation obligations of the customer

- 4.1 In addition to any customer's obligations as specified in the respective individual contract, the customer shall in particular provide the following cooperation services:
- 4.2 The customer shall appoint a competent contact person for Destira and, if necessary, a representative who can make binding decisions for the customer during the execution of the contract. This representative shall be available for the exchange of necessary information and shall participate in the decisions necessary for the implementation of the contract.
- 4.3 The customer shall ensure that the documents, information etc. necessary for the provision of the services are made available to Destira in full, correctly and in good time, insofar as these are not owed by Destira. Destira may assume that these documents, information, etc. are complete and correct, unless the contrary is apparent.
- 4.4 The customer shall be obliged to support Destira to the extent necessary and reasonable and to create all the conditions necessary for the proper execution of the contract in its sphere of operation. In addition, the customer shall provide sufficient workplaces and work equipment.
- 4.5 The provision of resources and cooperation by the customer under the agreement shall be free of charge for Destira.

5 Obligation of secrecy and data protection

- 5.1 Both parties agree to treat as strictly confidential any business and trade secrets, documents and information ("*vertrauliche Informationen*") - in whatever form - which they have become aware of during the business relationship or which have been made available to them by the other party, and not to pass them on to third parties or allow them access to them. This shall also apply to confidential information from or about affiliated companies Act ("*verbundene Unternehmen*") within the meaning of §§ 15ff. German Stock Corporation. Any disclosure of confidential information to persons who are not involved in the conclusion, execution or settlement of the contractual relationship may only be made with the written consent of the contractual partner. Excepted from this is the disclosure of confidential information by the customer to its affiliated companies and, if necessary, to other contractual partners of the customer who are themselves

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obliged to maintain confidentiality. The parties shall also impose these obligations on their employees and any third parties employed by them. The obligation of confidentiality shall not apply if the confidential information was already known to a party in advance or was or will become public knowledge or if it is made known to a party by a third party without a breach of confidentiality there.

5.2 Destira shall observe all relevant statutory data protection provisions, in particular if Destira is granted access to the operation or to the customer's hardware and software. Destira shall bind its employees or other agents to also comply with these provisions before commencing their activities.
This obligation shall continue to exist beyond the end of the individual contract.

5.3 If computer programs, scripts and accompanying materials (e.g. documentation, presentations) are produced by Destira in accordance with customer requirements within the framework of the respective individual contract, Destira grants the customer (for itself and all associated companies) the exclusive, unlimited and irrevocable rights of use, including the right to edit and other reworking. The customer shall be entitled to exercise these rights even after termination of the respective contract.

5.4 The distribution and public disclosure of materials within the meaning of clause 5.3 by the customer is not permitted during and after termination of this contract.

5.5 Within the scope of the execution of the individual contract, no processing or use of personal data is carried out on behalf of the customer. A transfer of personal data is only carried out in exceptional cases as a secondary consequence of the contractual performance of services. Insofar as Destira has access to personal data, Destira shall act exclusively as a commissioned data processor ("*Auftragsdatenverarbeiter*") (Art. 28 DSGVO) and process and use this data only for the purpose of implementing the contract. The customer shall remain responsible for compliance with the provisions of data protection laws, in particular with regard to the data of its employees and customers. Destira shall observe the legal requirements for commissioned data processing and instructions of the customer (e.g. for compliance with deletion and blocking obligations) for handling this data. In this case, the customer shall conclude a separate written agreement with Destira for commissioned data processing in accordance with Article 28 DSGVO.

6 Liability

6.1 Destira shall be liable for compensation for damages caused by Destira and its legal representatives or agents through intent ("*Vorsatz*") or gross negligence ("*grobe Fahrlässigkeit*") and for

damages arising from injury to life, body or health for which Destira, its legal representatives or agents are responsible.

- 6.2 For damages other than those specified in Section 6.1, which are based on a slightly negligent breach of essential contractual obligations ("*Kardinalpflichten*"), Destira shall be liable, limited to compensation for foreseeable damage typical of the contract. Cardinal contractual obligations within the meaning of sentence 1 are such obligations, the breach of which endangers the achievement of the purpose of the contract, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer regularly relies. Liability for other, indirect or remote consequential damages is excluded. For any individual case of damage, liability is limited to the contract value.
- 6.3 In the event of loss of data, Destira shall only be liable for the expenditures required to restore the data in the event of proper data backup by the customer. In the event of slight negligence on the part of Destira, this liability shall only apply if the customer has carried out a proper data backup immediately before the measure leading to the loss of data.
- 6.4 Any further liability for damages other than those mentioned in section 6.1, which are based on a slightly negligent breach of duties other than those mentioned in section 6.2, is excluded.

7 Miscellaneous

- 7.1 Changes and amendments to all contracts concluded between the parties shall only be agreed in writing. The cancellation of the written form requirement must also be in writing to be effective.
- 7.2 The contract is subject to the law of the Federal Republic of Germany, excluding legal norms that refer to another legal system. Where a German term has been added in parenthesis after an English term in this GTC or any individual agreement, the German term shall be conclusive in interpreting the relevant English term whenever such English term is used in the GTC or agreement.
- 7.3 The place of jurisdiction for all legal disputes arising from the contractual relationships of the parties and for disputes relating to the creation and effectiveness of these contractual relationships with merchants ("*Kaufleuten*"), a legal entity under public law or a special fund under public law shall be the registered office of Destira. Destira shall, however, be entitled to sue the customer at its registered office.
- 7.4 If any provision of this GTC be or become ineffective or if an omission in the regulations should become apparent, this shall not affect the validity of the remaining provisions. In this case, the parties shall replace the invalid provision or omission with a legally permissible provision that comes as close as possible to the originally intended economic purpose.