

## Terms and Conditions for Delivery Services

### 1. Scope

- 1.1** These Terms and Conditions apply to all delivery services (“**Delivery Services**”) ordered by the Customer from Nexus by way of individual agreements (“**Individual Contracts**”). These General Terms and Conditions govern the business relationship between the Customer and Nexus (the “**Parties**”), even if not explicitly agreed upon in the individual case.
- 1.2** To the extent an Individual Contract does not contain any explicit deviating stipulations, the stipulations of these Terms and Conditions shall apply to all Delivery Services rendered by Nexus to the Customer. For the avoidance of doubt, any deviating stipulations in an Individual Contract shall prevail over these General Terms and Conditions.
- 1.3** Any general terms and conditions of the Customer that deviate from or supplement the provisions of these Terms and Conditions shall not become part of any Individual Contract unless agreed by both Nexus and the Customer in writing.
- 1.4** Nexus’s offers are non-binding, unless explicitly stated otherwise in the respective offer; therefore, the respective Individual Contract is concluded if the Customer accepts Nexus’ offer and Nexus has confirmed the order by way of an order confirmation (as a rule in writing).
- 1.5** Specific performance obligations shall only arise in connection with Individual Contracts.
- 1.6** The Delivery Services include, e.g., all consultancy services provided by Nexus, such as implementation, configuration services and upgrade assistance services.
- 1.7** The Delivery Services shall be performed in a professional and workmanlike manner.
- 1.8** Nexus shall provide the Delivery Services on its own premises, from Monday to Friday (with the exceptions of public holidays) between 09.00 and 17.00 local time.

- 1.9** Nexus will not be responsible for achieving any specific result, unless a contract for Project Works has been concluded (Section 6) has been concluded. The Customer shall be responsible for providing Nexus with the necessary resources, permits and information or other required support.

### 2. General Rules for Delivery Services

- 2.1** Unless explicitly agreed otherwise, Nexus will not render services on the premises of the Customer. Any services rendered on the Customer’s premises as well as any other services beyond the scope of these Terms and Conditions and any Individual Contract shall be rendered by Nexus against separate payment of actuals according to the agreed daily rates.
- 2.2** Nexus shall only deploy adequately qualified personnel for the performance of its obligations under Individual Contracts governed by these Terms and Conditions.
- 2.3** The Delivery Services under any Individual Contract shall generally be rendered in the English language. If the Delivery Services are to be rendered in German, this has to be specifically agreed between the Parties.

### 3. Obligations of the Customer

- 3.1** The Customer shall fulfil all of its cooperation obligations required or helpful for the performance of Delivery Services by Nexus, irrespective whether such cooperation obligations are explicitly or implicitly agreed or otherwise required or helpful for the performance of Delivery Services by Nexus.
- 3.2** In particular, the Customer shall, in accordance with the provisions of these Terms and Conditions and any Individual Contract, grant to Nexus all rights of access to premises and buildings at which Nexus is to perform its services and provide Nexus proactively with all required or helpful information.
- 3.3** If the Customer fails to fulfil its cooperation obligations, Nexus shall be released from its

performance obligations to the extent the respective performance requires the Customer's cooperation.

**3.4** Where the Customer commissions third parties in connection with the fulfilment of its cooperation obligations, it shall be liable for own faults as well as for the fault of such third parties. In the event the Customer (or such third party) culpably violates its duty to cooperate, it shall compensate Nexus for all resulting damages, e.g. costs of idleness.

**3.5** The Customer is responsible to procure any required authorizations and licenses for the operation of its hardware and software as well as for any approvals or authorizations required to receive the Delivery Services, e.g. export control permits. In particular, this also applies to any and all software licenses which are necessary for the intended use of the services provided by Nexus.

#### **4. Rights of Use**

**4.1** To the extent any result of the Delivery Services is protected by intellectual property rights (e.g. in the case of software), Nexus shall grant to the Customer the permanent, non-exclusive right to use the result of the Delivery Services for its own purposes. Nexus reserves its rights with respect to any change, copy, distribution, and publishing of the result of the Delivery Services.

**4.2** The Customer shall instruct its employees to comply with the provisions of these General Terms and Conditions.

#### **5. Remuneration and Payment**

**5.1** The remuneration for the Delivery Services to be rendered is set forth in the Individual Contract. To the extent the Individual Contract does not provide the applicable rates for such Delivery Services in whole or in part, Nexus' price lists applicable at the time of the conclusion of the Individual Contract shall apply.

**5.2** The Delivery Services rendered will be remunerated and invoiced to the Customer according to the time spent.

**5.3** Travelling time and costs will be remunerated and invoiced to the Customer separately.

**5.4** The Delivery Services will be invoiced to the Customer on a monthly basis.

**5.5** The remuneration for the Project for Works to be performed is defined in the Individual Contract. To the extent the Individual Contract does not define the remuneration in whole or in part, Nexus's price lists applicable at the time of the conclusion of the Individual Contract shall apply and Nexus's services shall be remunerated on a time and material basis.

**5.5.1** Unless explicitly agreed otherwise, travelling time and costs will be remunerated and invoiced to the Customer separately.

**5.5.2** Unless explicitly agreed otherwise, the remuneration for Project for Works will be invoiced as follows:

- (i) 20% after conclusion of the Individual Contract, and
- (ii) 60% according to progress made (e.g. milestones defined in the SOW), and
- (iii) 20% after acceptance of the Deliverables.

In case of partial acceptances, Nexus shall be entitled to invoice the part of the remuneration which corresponds to the respective Deliverable accepted.

**5.6** Nexus shall charge the remuneration for Delivery Services as well as for Project for Works as agreed in the respective Individual Contract plus VAT as applicable. For the avoidance of doubt, any taxes applicable to the Customer which apply in connection with the business relationship between the Customer and Nexus (e.g. sales taxes or source taxes) are to be borne by the Customer.

**5.7** The Customer shall pay the due remuneration in full within thirty (30) calendar days from receipt of the respective invoice.

#### **6. Project for Works**

If Nexus shall provide Delivery Services as a project for works, i.e. where a specific result is to be achieved by Nexus which has been jointly defined in detail ("**Project for Works**"), Sections 8 and 9 apply in addition to the other Sections of these Terms and Conditions and take precedence in case of conflict.

- 6.1** As part of the Individual Contract for Project for Works, the Parties shall sign a written statement of work (“**SOW**”) detailing the specific results to be achieved by Nexus (“**Deliverables**”), including the applicable acceptance procedure.
- 6.2** The project specifics, such as implementation plan or time schedules shall be specified in the SOW.
- 6.3** Nexus may freely determine the methods and tools necessary for providing the Project for Works.
- 7. Rights of Use with Regard to Project for Works**
- 7.1** To the extent the Deliverables are protected by intellectual property rights (e.g. in the case of software), Nexus shall grant to the Customer the permanent, non-exclusive right to use the Deliverable for its own purposes. Nexus reserves its rights with respect to any change, copy, distribution, and publishing of the Deliverables.
- 7.2** Nexus warrants that the Deliverable is free of any third-party rights that would restrict or exclude its contractually agreed use. Should the contractual use of the Deliverable be affected by third-party industrial property rights, Nexus shall be entitled to reasonably modify the Deliverable in such a way that it no longer falls under the protection of such rights while at the same time preserving its essential usage functions, or to obtain authorisation that the Deliverable may be used without restrictions without additional costs.
- 7.3** The Customer shall instruct its employees to comply with the provisions of these General Terms and Conditions.
- 8. Acceptance**
- 8.1** Nexus shall inform the Customer about the date as of which the Deliverables will be ready for acceptance testing (“Acceptance Readiness Date”). The Customer shall then promptly commence to carry out the agreed acceptance testing procedures, exclusively to verify compliance of the Deliverables with the SOW. To the extent not explicitly agreed otherwise, the acceptance procedure shall be carried out as described in this Section 21.
- 8.2** Within ten (10) calendar days as of the Acceptance Readiness Date or as of the receipt of the respective notice indicating the Acceptance Readiness Date, whichever is later, (“Acceptance Deadline”), the Customer shall declare in writing acceptance, acceptance with reservation or its refusal to accept. The Deliverables are deemed to be accepted if the Customer does not declare in writing its refusal to accept within the Acceptance Deadline. Any such refusal or acceptance with reservation shall include the detailed description of the material defects which prevent the acceptance (without reservation).
- 8.3** In any event, the Deliverables shall be deemed to be accepted if the Customer actually makes use of the Deliverables (other than for mere purposes of the acceptance testing).
- 8.4** The Customer shall accept the Deliverables in case there are no material defects; in case of non-material defects, the Customer is not entitled to refuse acceptance but shall instead accept the Deliverables with reservation.
- 8.5** In case of defects, Nexus will rectify the defect within a reasonable time not shorter than thirty (30) calendar days as of receipt the Customer’s refusal to accept or acceptance with reservation. Upon completion of the rectification, the Parties shall proceed as provided for in Sections 21.1 et seq. above.
- 8.6** If a Deliverable is materially defective after the second rectification and the Customer therefore refuses to accept, the Customer can declare acceptance with reservation and reduce Nexus’ remuneration claims adequately in view of the remaining defects or – provided that the Deliverable Works is of no reasonable use for the Customer – rescind the underlying Individual Contract. Nexus can refuse the Customer’s demand to further rectifications.
- 8.7** If Nexus fails to have the Deliverable ready for acceptance testing in due time, the Parties shall agree on a reasonable additional time period (not to be shorter than thirty (30) calendar days) for Nexus to deliver the Project for Works. If after such additional time period the Deliverable is still not ready for acceptance testing, the Customer may set a final deadline by written notice (not to be shorter than twenty (20) calendar days after Nexus re-

ceived the Customer's notification). Such written notice shall provide a warning that the Customer may rescind the Individual Contract if the final deadline expires. In the event the Deliverable is still not ready for acceptance testing at such final deadline, the Customer shall be entitled to rescind the respective Individual Contract.

**8.8** If the Customer causes a delay, Nexus shall be entitled to adjust the delivery dates for the Project for Works accordingly and to be compensated for any damage incurred by Nexus due to such delay.

**9. Defects with regard to Project for Work**

**9.1** Nexus shall assume warranty obligations in case of defects of the Deliverable pursuant to the provisions of this Section 9.

**9.2** The nature and quality of the Deliverables are conclusively described in the SOW. Nexus does not assume any guarantee with respect to the nature and quality and/or durability of the Project for Works nor any other guarantee, unless it has explicitly assumed a specified guarantee under an Individual Contract.

**9.3** Nexus shall not be liable for any defects resulting from the use of a hardware and/or software environment that does not meet the system requirements described in the Individual Contract. The Customer may not assert any claims for defects resulting from a modification of the Deliverables which was not carried out, arranged for or approved by Nexus.

**9.4** In case of a defect, Nexus may, at its own discretion, remedy the defect either by rectification or delivery of a new item (right to subsequent performance) within a reasonable period of at least four (4) weeks. In case the Deliverable relates to software code,

(i) Nexus shall be entitled to remedy defects by delivery of new program packages (patches, updates) that are free of the reported defect;

(ii) where reasonable, such program packages shall be installed by the Customer. Otherwise, Nexus shall install the package via remote access. In the latter case, the Customer shall grant to Nexus the required remote access to the installation environ-

ment of the Nexus Software. If reasonable for the Customer, Nexus may, as a means of rectification, provide a workaround solution for the period until final remedy of the defect;

(iii) in the event of a new delivery, Nexus shall be entitled to deliver a new program version with an equivalent range of functions, unless this is unacceptable for the Customer, e.g. because it would require another operating system or substantially more powerful hardware. An initial training or user instruction for a modified program shall, in principle, not be deemed unacceptable for the Customer.

**9.5** If subsequent performance fails, the Customer will be entitled to request an adequate decrease of the agreed remuneration. The Customer shall not be entitled to rescind the respective Individual Contract or to exercise a step-in right (rectification by the Customer including reimbursement of resulting costs).

**9.6** The Customer's claims for defects shall become time-barred one (1) year from the date of (partial) acceptance. In case of wilful concealment of defects, statutory warranty provisions shall apply.

**9.7** The Customer shall reimburse Nexus for all expenses incurred by Nexus due to the Customer's request to rectify a defect if it turns out after inspection that no defect of the Nexus' services exists and the Customer could have realized that no defect exists after reasonable verification.

**10. Withholding of Performance and Set-off**

**10.1** The Customer shall be entitled to withhold or refuse performance with regard to claims that are undisputed or have been acknowledged by a final court decision or which are counter-claims from the same contractual relationship with Nexus. Other withholding rights are excluded.

**10.2** The Customer shall only be entitled to set-off claims against those claims of Nexus if the Customer's claims are undisputed or have been acknowledged by a final court decision

or are counterclaims from the same contractual relationship with Nexus. Other set-off rights are excluded.

## 11. Force Majeure

- 11.1** Malperformance shall not constitute a breach of contract to the extent it is caused by unpreventable occurrences, in particular epidemics and pandemics, earthquake, deluge, flooding, fire, explosion, blackout, embargos, governmental restrictions, riots, terrorist attacks, war or other military action, civil unrest, rebellion, vandalism, sabotage, strike at Nexus's or sub-supplier's plant, or other causes not attributable to the affected Party ("**Force Majeure**"). The obligations of the affected Party shall be suspended for the duration of Force Majeure.
- 11.2** The performance period shall be extended by the delay caused by the occurrence of Force Majeure plus an adequate restarting period.
- 11.3** In the event concrete indications exist that the impediment of performance due to Force Majeure will continue for more than one hundred and twenty (120) calendar days, either Party shall be entitled to terminate in writing any Individual Contract. If a one-off Individual Contract has not yet been performed, each of the Parties shall be entitled to rescind from the contract. All further rights shall be excluded in case of Force Majeure.

## 12. Liability

- 12.1** All rights of the Customer to claim damages or compensation for wasted expenditure shall, regardless of their legal nature, be subject to this Section 12.
- 12.2** Nexus shall be fully liable for damages caused by an intentional violation of its obligations.
- 12.3** Nexus shall also be fully liable for damages caused by a grossly negligent violation of its obligations, with the following exception: If the violation has been committed by a simple vicarious agent and has caused other damage than damage to life, body or health, Nexus' liability shall be limited to the foreseeable typical damage (as provided for in Section 12.5).
- 12.4** In case of simple negligence (i.e. not gross negligence), Nexus shall be liable as follows:

**12.4.1** Nexus shall be fully liable for damages (i) to life, body or health, (ii) caused by a violation of a contractual guarantee or (iii) in case of claims under the Product Liability Act.

**12.4.2** In all other cases than those addressed in Section 12.4.1, Nexus shall only be liable for the violation of such obligations that are material for the proper implementation of the Individual Contract and on the fulfillment of which the Customer relies and regularly may rely (essential duties). In such cases, liability shall be limited to the foreseeable typical damage as provided for in Section 12.5.

**12.4.3** Nexus liability for simple negligence in all other cases not addressed in Sections 12.4.1 and 12.4.2 is excluded.

**12.5** The Parties agree that the foreseeable typical damage shall not exceed the annual remuneration in case of an Individual Contract for Professional Services with a term exceeding one year or the overall contract value in case of shorter ongoing Individual Contracts for Professional Services, as the case may be.

**12.6** Unless explicitly agreed otherwise, the Customer shall be responsible to back-up its data in accordance with current technical standards. If any data is destroyed or lost, Nexus' liability shall be limited to such amount that would have been required for the recovery or replacement of such data if the Customer had made proper backups. Recovery expenses shall extend to the actually incurred additional costs for recovery and/or replacement of the data.

**12.7** All other liability of Nexus shall be excluded. The limitations of liability and exclusions of liability pursuant to this Section 12 shall not affect the liability of Nexus pursuant to the mandatory statutory provisions of the Product Liability Act, due to the fraudulent concealment of a defect or the assumption of a contractual guarantee for the quality of an item.

**12.8** The provisions of this Section 12 shall also apply in favour of Nexus' vicarious agents in case the Customer raises claims directly against any of them.



### 13. Marketing

Each Party shall be entitled to reference the name and trademark and/or the logo of the respective other Party on its website and in presentations for the term of the contractual relationship, unless the other Party objects in writing.

### 14. Confidentiality

**14.1** The Parties undertake not to disclose to any third party confidential information of the respective other Party of which they gain knowledge within the scope of negotiating and implementing any Individual Contract, and to likewise bind their respective employees within the scope of the applicable employment law to secrecy.

**14.2** Confidential information within the meaning of these Terms and Conditions is all information (whether in writing, electronically, orally, digitally embodied or in any other form) which is transferred from the holder to the recipient or to a person associated with the recipient within the meaning of Sects. 15 ff. AktG (German Stock Corporation Act) within the aforementioned scope. Confidential information includes, in particular, trade secrets, products, manufacturing processes, know-how, inventions, business relationships, business strategies, personnel matters, digitally embodied information (data), as well as any documents and information of the holder which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential due to the nature of the information or the circumstances of the transmission.

**14.3** This obligation does not apply to such confidential information:

**14.3.1** which were demonstrably already known to the other Party when the Individual Contract was concluded or which subsequently become known to the other Party by third parties, without this infringing any confidentiality agreement, statutory provisions or official orders.

**14.3.2** which are publicly known at the time of the conclusion of the Individual Contract or are made publicly known thereafter, unless this is based on a breach of the Individual Contract.

**14.3.3** which must be disclosed by virtue of statutory obligations or by order of a court or authority. To the extent permissible and possible, the Party subject to the disclosure obligation shall give prior notice to the other party and the opportunity to take action against the disclosure.

### 15. Enticement of Employees

**15.1** If the Customer hires an employee of Nexus, which is or has been assigned to provide services to the Customer, Nexus is entitled to charge a commission as follows:

**15.1.1** In case an employee is hired during the first three (3) months of the term of this contract 120,000.00 plus VAT;

**15.1.2** In case an employee is hired during the second three (3) months of the term of this contract 40,000.00 plus VAT;

**15.1.3** In case an employee is hired thereafter but within six (6) months after the term of this contract 30,000.00 plus VAT;

In case the Customer hires an employee of Nexus, the Customer has to pay the above commission, unless the Customer proves that it did not actively entice away the respective employee.

### 16. Term and Termination

**16.1** The Delivery Services shall be provided from and to the date agreed between the Parties in the respective Individual Contract.

**16.2** The Customer shall be entitled to terminate the respective Individual Contract for the Delivery Services for convenience with thirty (30) calendar days' prior written notice.

**16.3** Each Party shall be entitled to terminate any ongoing Individual Contract for the Delivery Services for good cause in case of a compelling reason if the terminating Party, taking into account all the circumstances of the specific case and weighing the interests of both Parties, cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period. If the compelling reason consists in the

breach of a duty under the contract, as a rule, the contract may be terminated only after the expiry without result of a period specified for relief or after a warning notice without result. Any statutory termination rights shall remain unaffected.

**16.4** The Customer may terminate the Individual Contract for a Project for Works at any time for convenience. In such case, the Customer shall pay to Nexus the agreed remuneration for the Project for Works less any costs saved due to the termination. Nexus shall apply best efforts to re-allocate resources to other client assignments in order to save costs.

**16.5** A partial termination of the Individual Contract for a Project for Works is possible only with respect to separable parts of the Project for Works.

**16.6** Nexus may demand payment for the part of the Project for Works rendered until termination (on the basis of the actual effort provided until termination). The possibility to assert claims for damages remains unaffected.

## **17. Applicable law and Place of Jurisdiction**

**17.1** These Terms and Conditions and any Individual Contract shall exclusively be governed by German law. The regulations of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall be excluded.

**17.2** If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Düsseldorf. The same applies if the Customer is an entrepreneur within the meaning of Sect. 14 BGB. Priority statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

## **18. Miscellaneous**

**18.1** All changes, amendments, supplements or substantiations to the provisions of these Terms and Conditions as well as special guarantees and arrangements shall require the written form. The aforesaid also applies to any amendments of this Section 18.1.

**18.2** Should a provision of these Terms and Conditions or any Individual Contract be or become invalid, this shall not affect the validity of the remaining provisions.

**18.3** Any oral agreements shall be confirmed in writing.