

# GENERAL TERMS AND CONDITIONS (GTC)

## - STACKFORCE GMBH -

### 1 REMUNERATION, PAYMENT, SERVICE PROTECTION, DEADLINES

- 1.1 Unless agreed otherwise, remuneration is calculated according to expenditure at STACKFORCE GmbH 's prices generally applicable at the time of contract conclusion. Remuneration essentially comprises net prices plus statutory value-added tax incurred.

STACKFORCE GmbH can invoice monthly. If services are remunerated according to expenditure, STACKFORCE GmbH shall document the nature and duration of the activities, and submit this documentation with the invoice, at the latest at the request of the customer

- 1.2 All invoices must be paid no later than 14 calendar days after receipt, free of charges for the recipient and without any deductions.

- 1.3 The customer may offset or withhold payments due to defects only insofar as said customer is actually entitled to payment claims based on material defects or defective titles related to services. For other claims arising out of defects, the customer may withhold payments only proportionately, taking the defect into consideration. Item 4.1 applies correspondingly. The customer has no right of retention if their claim arising out of defects has lapsed. Furthermore, only claims which are undisputed or established in a legally valid way allow the customer to offset or exercise a right to withhold.

- 1.4 STACKFORCE GmbH reserves the right to retain title and due rights regarding services until full payment of the owed remuneration, authorized retention due to defects being as per item 1.3 Clause 2 are taken into consideration. Furthermore, STACKFORCE GmbH reserves the right to retain title until fulfilment of all their claims arising from the business relationship with the customer.

STACKFORCE GmbH is entitled to prohibit the customer from further use of services for the duration of the customer's default of payment. STACKFORCE GmbH can assert this right only for a reasonable period of time, usually a maximum of 6 months. This does not constitute withdrawal from the contract. § 449 Paragraph 2 of the German Civil Code remains unaffected.

If a customer or their buyers return services, receipt of these services does not constitute withdrawal by STACKFORCE GmbH unless they have expressly declared withdrawal. The same is true for seizure of goods subject to retention of title or rights to such goods on STACKFORCE GmbH's part.

The customer may neither pledge nor assign as collateral items which are subject to retention of title or legal reservations. The customer is only authorized as a reseller to resell items in the ordinary course of business, under the condition that claims against the customer's buyers in connection with the resale have been validly assigned to STACKFORCE GmbH, and the customer transfers ownership to their buyers subject to payment. By concluding this contract, the customer assigns their future claims regarding such sales vis-à-vis their buyers as a security to STACKFORCE GmbH, who hereby accepts this assignment.

If the value of STACKFORCE GmbH's collateral rights exceeds the value of the secured claims by more than 20 %, STACKFORCE GmbH shall release a corresponding portion of the security rights at the customer's request.

- 1.5 In the event of a permissible transfer of usage rights pertaining to deliveries and services, the customer is obliged to impose the contractually agreed restrictions on the recipient.
- 1.6 If the customer fails to settle due claims wholly or partially by the contractual payment date, default interest shall be payable at the rate of 9 % above the base rate of the European Central Bank or rather STACKFORCE GmbH can revoke agreed payment terms for all claims. Furthermore, STACKFORCE GmbH is entitled to render other services only against advance payment. The advance payment is to cover the respective billing period or – in the case of one-time services – their remuneration.
- 1.7 The customer is obliged to submit regular, contractually agreed reports to STACKFORCE GmbH in due time. If the customer fails to provide such a report within the contractually agreed period and if this report is the basis for a payment claim due to the continuous use of services to be remunerated in contractually agreed periods of time, STACKFORCE GmbH can make a claim in the amount of the maximum usability without further notice.
- 1.8 If the customer is economically unable to fulfil their obligations vis-à-vis STACKFORCE GmbH, STACKFORCE GmbH may terminate existing exchange agreements with the customer through withdrawal, and continuing obligations through cancellation without notice, also in the event of an insolvency application by the customer. § 321 of the German Civil Code and § 112 of the German Insolvency Law remain unaffected. The customer shall give STACKFORCE GmbH timely, written notification of any impending insolvency.
- 1.9 Fixed service deadlines must exclusively be agreed expressly in documented form. Agreement of a fixed service deadline is subject to the provision that STACKFORCE GmbH receives services from their respective suppliers in a timely and contractually compliant manner.

## 2 COLLABORATION, OBLIGATIONS TO COOPERATE, CONFIDENTIALITY

- 2.1 The customer and STACKFORCE GmbH shall each appoint a responsible contact point. Communication between the customer and STACKFORCE GmbH is to take place via these

contact points, unless agreed otherwise. The contact points shall promptly make all decisions related to contract execution. The decisions must be documented in a binding form.

- 2.2 The customer is obliged to support STACKFORCE GmbH as necessary and create all the conditions necessary in their sphere of operations for proper execution of the contract. For this, they shall provide STACKFORCE GmbH without charge, in particular, the necessary information, materials, devices, documents, processes etc. before the fulfilment of the order, and shall do so, if necessary, at their own costs. The customer shall furthermore ensure that qualified staff are available for supporting STACKFORCE GmbH.

Insofar as the contract contains agreements that services are provided at the customer's site, the customer shall provide the personnel of STACKFORCE GmbH or of third parties mandated by STACKFORCE GmbH access to all space, installations (hardware, software, networks, etc.) and other instrumentalities, during the usual business hours and within operational rules of access without cost, which is ordinarily necessary for STACKFORCE GmbH to provide the service. If necessary, the customer will obtain functional work stations free of charge for the employees of STACKFORCE GmbH or for third parties mandated by STACKFORCE GmbH.

- 2.3 Unless agreed otherwise, the customer shall provide for proper data backup and precautions against failure of data and components (e.g. hardware, software) in a manner appropriate to their nature and importance.
- 2.4 The customer shall immediately report defects in an understandable and detailed manner in writing, including all information useful for defect identification and analysis. To be described here, in particular, are the work steps which led to occurrence of the defect, as well as the manifestation and effects of the defect. STACKFORCE GmbH's relevant forms and procedures shall be used for this purpose, unless agreed otherwise.
- 2.5 On request, the customer shall appropriately assist STACKFORCE GmbH in reviewing and asserting claims against other participants relating to service provision. This applies especially to recourse claims by STACKFORCE GmbH against re-suppliers.
- 2.6 The contractual partners are obliged to maintain confidentiality about trade secrets as well as other information designated as confidential (e.g. in records, documents, data inventories) which becomes known in the context of contract execution, and to neither utilize nor disclose such information outside the purpose of the contract, without the other contractual partner's consent.

The contractual partner receiving such information is obliged to take appropriate confidentiality measures applicable to trade secrets and information designated as confidential. Neither contractual partner is entitled to obtain trade secrets of the other contractual partner by observing, investigating, dismantling or testing the object covered by the contract. The same applies to other information or objects received during contract execution.

Disclosure of trade secrets and other information designated as confidential to persons not involved in signing, executing or completing the contract is permissible only with the other contractual partner's written consent in each case.

Unless otherwise agreed, the commitment to confidentiality regarding other information designated as confidential ends after a period of five years following the termination of this relevant business relationship. Trade secrets are to be kept confidential for an unlimited period of time.

- 2.7 The contractual partners are aware that electronic and unencrypted communication (e.g. via e-mail) is laden with security risks. For this type of communication, they will therefore assert no claims based on a lack of encryption, unless encryption was previously agreed.
- 2.8 The customer commits not to recruit any employees of STACKFORCE GmbH, either directly or indirectly, during or up to two years after the termination of this contract.

For each case of an infringement, the customer pays a contractual penalty in the amount of a gross annual salary including bonuses for the employee, who is recruited by the customer in violation of the obligation in accordance with sentence 1. For the calculation of the contractual penalty, the gross annual salary of the employee, which he received in the year before the forfeiture of the contractual penalty, is decisive. The contractual penalty will not be incurred if the customer can prove that the employee left the services of STACKFORCE GmbH at least 6 months before the recruitment or that STACKFORCE GmbH gave their prior written consent to the recruitment.

### 3 DISRUPTIONS IN SERVICE PROVISION

- 3.1 If a factor for which STACKFORCE GmbH is not responsible, including strikes and lockouts, affects adherence to a deadline ("disruption"), the deadline is to be postponed by the duration of the disruption, in addition to a reasonable restart phase if necessary. Each contractual partner is to immediately notify the other partner about the cause of any disruption occurring in their sphere, as well as length of the postponement.
- 3.2 If expenditure rises due to a disruption, STACKFORCE GmbH may request remuneration of the additional expenditure, unless the customer is not liable for the disruption and its cause lies outside the scope of said customer's responsibility.
- 3.3 If the customer can withdraw from the contract due to improper service rendition by STACKFORCE GmbH and/or demand damage compensation instead of service or affirms this, they are to declare in writing on STACKFORCE GmbH's request within a reasonable, set period whether they will assert these rights or whether they still desire a provision of the service. In the event of withdrawal, the customer will reimburse STACKFORCE GmbH with the value of the previously existent utilization options; the same applies to deterioration through proper use.

If STACKFORCE GmbH is delayed in rendering services, the customer's compensation for damages and expenditure due to the delay is limited, for each completed week of delay, to 0.5 % of the price for the part of the contractual service which cannot be utilized due

to the delay. Liability for delays is limited to a maximum of 5 % of the remuneration for all contractual services affected by the delay; in the case of continuing obligations, it is based on remuneration for the relevant services for the full calendar year. This does not apply to delays due to gross negligence or willful intent on STACKFORCE GmbH's part.

- 3.4 If service provision is delayed, the customer has a right of withdrawal in the context of legal provisions only if STACKFORCE GmbH is responsible for the delay. If the customer rightfully raises a claim for compensation of damages or expenditure instead of service due to a delay, said customer is entitled to charge, for every full week of the delay, 1 % of the price for the part of the contractual service which cannot be utilized due to the delay, but no more than 10 % of this price, serving as a basis in case of continuing obligations is the remuneration for the affected services for the full calendar year.

## 4 MATERIAL DEFECTS AND REIMBURSEMENT OF EXPENDITURE

- 4.1 STACKFORCE GmbH guarantees the contractually owed quality of services. Claims regarding material defects do not arise if STACKFORCE GmbH's services deviate just negligibly from the contractual quality.

Nor do claims regarding defects arise in case of excessive or improper use, natural wear and tear and failure of components in the system environment. The same applies to software errors which cannot be reproduced or otherwise proven by the customer. This also applies to damage due to special external influences which are not a prerequisite under the contract. Claims regarding defects also do not arise in case of subsequent alteration or repair by the customer or third parties, unless this does not hinder analysis and removal of the material defect.

Item 6 applies as a supplement to claims for compensation of damages and expenditure.

- 4.2 The limitation period for claims based on material defects is one year from the statutory beginning of limitation. The statutory periods for recourse according to § 478 of the German Civil Code remain unaffected. The same applies insofar as longer periods are prescribed, pursuant to § 438 Paragraph 1 Item 2 or § 634a Paragraph 1 Item 2 of the German Civil Code, in case of intentional or grossly negligent breach of duty by STACKFORCE GmbH, fraudulent concealment of defects, harm to life, body or health, as well as claims based on the product liability act.

STACKFORCE GmbH's processing of a notice of a material defect from the customer only retards the limitation period insofar as the statutory prerequisites for this are present. The limitation period does not newly begin as a result.

Supplementary performance (new delivery or reworking) can only influence the limitation period for the defect which triggered supplementary performance.

- 4.3 Recourse claims in contracts for digital products in accordance with § 327u of the German Civil Code remain unaffected by Items 4.1 and 4.2.

If a buyer asserts a claim against the customer that can lead to a recourse claim, the customer shall immediately inform STACKFORCE GmbH of the claim asserted and the additional information necessary and useful for its assessment. The customer shall enable STACKFORCE GmbH to satisfy the claim asserted by the customer's buyer, unless this is unreasonable for the customer. The customer and STACKFORCE GmbH will coordinate and cooperate with the aim of satisfying a justified claim of the customer's buyer as effort- and cost-effectively as possible.

- 4.4 STACKFORCE GmbH can demand remuneration for their expenditure insofar as
- they act on a report without there actually being a defect, unless the customer could not recognize with reasonable effort that no defect existed, or
  - a reported fault is not reproducible or otherwise demonstrable as a defect by the customer, or
  - additional expenditure is incurred due to improper fulfilment of the customer's obligations (also refer to Items 2.2, 2.3, 2.4 and 5.2).

## 5 DEFECTS OF TITLE

- 5.1 STACKFORCE GmbH is liable for infringement of third-party rights by STACKFORCE GmbH's service only insofar as the service is utilized unmodified in accordance with the contract and, in particular, in the contractually agreed or otherwise intended environment.

STACKFORCE GmbH is liable for infringements of third-party rights only within the European Union and the European Economic Area, and at the location of service utilization as per the contract. Item 4.1 Clause 1 applies accordingly.

- 5.2 If a third party asserts vis-à-vis the customer that a service from STACKFORCE GmbH violates their rights, the customer shall promptly notify STACKFORCE GmbH. STACKFORCE GmbH and, if applicable, their suppliers are authorized but not obliged to ward off the asserted claims, to the extent permitted, at their own expense.

The customer is not authorized to recognize third-party claims before giving STACKFORCE GmbH an adequate opportunity to avert the third-party rights in other ways.

- 5.3 If third-party rights are breached by one of STACKFORCE GmbH's services, STACKFORCE GmbH, at their own expense and discretion, shall
- supply the customer with the right to use the service, or
  - organize the service such that it is free of legal breaches, or
  - take back the service and refund the remuneration paid by the customer (minus a reasonable reimbursement for use) if STACKFORCE GmbH cannot achieve any other remedy with reasonable effort.

The customer's interests are to be considered adequately here.



- 5.4 Claims of the customer regarding defects in title lapse according to Item 4.2. Item 6 applies additionally to the customer's claims for damage and expenditure compensation; Item 4.4 applies accordingly to STACKFORCE GmbH's additional expenditures.

## 6 THE PROVIDER'S GENERAL LIABILITY

- 6.1 STACKFORCE GmbH is always liable to the customer
- a) for damage caused by STACKFORCE GmbH or their legal representatives or vicarious agents intentionally or through gross negligence,
  - b) according to the product liability law and
  - c) for damage which arises from harm to life, body or health, and for which STACKFORCE GmbH, their legal representatives or vicarious agents are responsible.
- 6.2 STACKFORCE GmbH is not liable for slight negligence unless they have breached an essential contractual obligation whose fulfilment is a prerequisite for proper execution of the contract, or whose breach endangers attainment of the contractual goal and whose observance the customer must regularly rely on.

For material and pecuniary damages, this liability is limited to the damages typical and foreseeable for the contract. The same applies to loss of profit and savings which failed to materialize. Liability for other remote consequential damage is excluded.

For an individual instance of damage, liability is limited to the contract value or to 50.000 €, depending on which value is higher; for ongoing remunerations, liability is limited to the amount of remuneration paid from the beginning of the contract period until the occurrence of the damage. Item 4.2 applies accordingly to the statute of limitations. On contract conclusion, the contractual partners can agree further liability in writing, usually in exchange for a separate remuneration. An individually agreed liability sum has priority. Liability as per Item 6.1 is not influenced by this paragraph.

If the damage is covered by STACKFORCE GmbH's business liability insurance and the insurer has paid STACKFORCE GmbH, the liability limitation will be extended to the payment. STACKFORCE GmbH undertakes to maintain the insurance coverage that was in place when the contract was concluded.

- 6.3 On the basis of a guarantee declaration, STACKFORCE GmbH is only liable for damage compensation if this was explicitly accepted in the guarantee. In the case of slight negligence, this liability is subject to the limitations set forth in Item 6.2.
- 6.4 If recovery of data or components (e.g. hardware, software) becomes necessary, STACKFORCE GmbH is liable only for the expenditure required for recovery given proper data backup and failure precautions by the customer. In case of slight negligence by STACKFORCE GmbH, this liability arises only if the customer implemented appropriate data

backup and failure precautions for the type of data and components before the disruption. This does not apply if agreed as performance to be delivered by STACKFORCE GmbH.

- 6.5 Items 6.1 to 6.4 apply accordingly to claims for compensation of expenditure and other liability claims of the customer against STACKFORCE GmbH. Items 3.3 and 3.4 remain unaffected.

## 7 DATA PRIVACY

The customer shall conclude agreements legally required for handling of personal data with STACKFORCE GmbH.

## 8 MISCELLANEOUS

- 8.1 The customer is responsible for complying with import and export regulations applicable to deliveries and services, in particular those associated with the United States. For cross-border deliveries and services, the customer shall cover customs, fees and other charges. The customer is responsible for handling legal and official procedures in connection with cross-border deliveries and services, unless expressly agreed otherwise.

- 8.2 German law shall apply. Application of the CISG is excluded.

- 8.3 STACKFORCE GmbH renders their services on the basis of their general business terms. The customer's general business terms do not apply, even if STACKFORCE GmbH has not expressly contradicted them.

Acceptance of services by the customer is regarded as recognition of STACKFORCE GmbH's general business terms, waiving the customer's general business terms.

Other conditions are binding only if STACKFORCE GmbH has recognized them in writing; in this case, STACKFORCE GmbH's general business terms apply as a supplement.

- 8.4 Amendments and supplements to this contract can only be agreed in writing. Insofar as the written form is agreed (e.g. for termination, withdrawals), the text form is not sufficient.

- 8.5 STACKFORCE GmbH's domicile is the place of jurisdiction vis-à-vis merchants, legal persons under public law or special funds under public law. STACKFORCE GmbH can also file suit against the customer at their domicile.

## 9 CONTACT

- 9.1 Requests to STACKFORCE GmbH shall be done by one of the following methods:

- a) Mailing address:  
STACKFORCE GmbH  
Biengener Str. 3  
79427 Eschbach  
Germany



- b) E-mail:  
General requests: [info@stackforce.de](mailto:info@stackforce.de)  
Support requests: [support@stackforce.de](mailto:support@stackforce.de)
- c) Fax: +49-7634-69960-30
- d) Phone (during business hours only): +49-7634-69960-20

9.2 STACKFORCE GmbH's business hours are from 9 AM to 5 PM (German time zone) at working days (Monday to Friday). This does not include legal holidays according to the regulations for Baden-Württemberg and company holidays. During these periods, STACKFORCE GmbH is available to a limited extent; inquiries are processed on the following business day.

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