

- I General Terms and Conditions of Sale and Delivery
- II General Terms and Conditions of Business for Software Solutions

I General Terms and Conditions of Sale and Delivery

1. Validity

- 1.1 These General Terms and Conditions of Sale and Delivery ("Terms and Conditions of Delivery") of smart-TEC GmbH & Co. KG, Kolpingring 3, D-82041 Oberhaching, (hereinafter also referred to as "Supplier", "Suppliers" or "we") shall apply to all contracts entered into by the Buyer and the Supplier (hereinafter also jointly referred to as "Contracting Parties") for the sale, manufacture, processing and delivery of goods. They shall also apply to all future business relations with the Buyer insofar as legal transactions of the same or a related kind are concerned, even if they are not expressly agreed. The Buyer's varying, conflicting or supplementary general terms and conditions of business shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing.
- 1.2 Our currently valid General Terms and Conditions of Business can be viewed and printed on the website <https://www.smart-tec.eu/agb>.

2. Offer and entering into a contract

- 2.1 All offers not expressly marked as binding are subject to change without notice. Technical changes as well as changes in form, colour and/or material remain reserved as part of reasonable action. The Supplier may accept orders or commissions within 14 days of receipt.
- 2.2 Contracts which are not signed by both contracting parties shall only be deemed entered into upon written confirmation by the Supplier. The contract fully reflects all agreements entered into by the contracting parties on the subject matter of contract. Oral promises made by the Seller prior to the entering into this contract are not legally binding and oral agreements between the contracting parties shall be replaced by a written contract unless it is expressly stated in each case that they shall continue to have binding force.
- 2.3 The contracting parties may make additions and amendments to the contract. Subject to proof to the contrary, a written contract or written confirmation by the Supplier shall be authoritative for the content of such agreements.
- 2.4 The information and illustrations received by smart-TEC with regard to our products are approximate values that are customary in the industry unless they have been expressly described by us as have binding force.

3. Delivery

- 3.1 Unless otherwise agreed, we deliver ex works. Shipping costs and packaging shall be invoiced at cost price.
- 3.2 The Supplier reserves the right to choose the mode of dispatch.
- 3.3 The delivery time shall only be deemed to be approximately agreed unless a fixed period or a fixed date has been expressly assured or agreed. It shall commence from the time at which the Supplier has received all information and releases from the Buyer, if these are required, or from the date of the order confirmation. The delivery period shall be deemed to have been complied with if the goods have left the factory in full or in part at the agreed time or, in the case of impossibility of dispatch, if the Buyer has been notified that the goods are ready for dispatch. In the event of a delay in delivery, a reasonable period of grace must be set. Partial deliveries must be accepted if they are of interest to the Buyer according to the purpose of the contract, delivery of the remaining ordered goods is ensured and the Buyer does not incur any significant additional expense as a result.
- 3.4 In the event of amendments to the contract by the Buyer that affect the delivery period, the delivery period may be extended to a reasonable extent. These amendments may not delay completion of orders by more than three months.
- 3.5 Goods ordered via call-up must be accepted within 12 months after order confirmation. The binding delivery quantities are to be notified in writing at least 2 months before the delivery date.
- 3.6 If we can foresee that the goods cannot be delivered within the delivery period, we shall inform the Buyer of this without delay and in writing, inform it of the reasons for this and, if possible, state the expected delivery date. In the event of delays in delivery and performance due to force majeure and other unforeseeable extraordinary circumstances for which we are not responsible, e.g. in the event of strike, war, warlike conditions, unrest, lawful lockouts, revolution, rebellion, military or civil coups, terror, riots, embargos, government orders, administrative directives, fire, hurricanes or other severe weather on the scale of a catastrophe as well as natural events such as earthquakes and landslide, etc., any agreed delivery and performance periods shall be extended by the duration of the hindrance. Force majeure is an external event that cannot be averted even by exercising the utmost care that could reasonably be expected and that cannot be attributed to either the operational sphere of the Buyer or the personal sphere of the Supplier. Force majeure in this sense also includes pandemics or epidemics such as the Corona pandemic, insofar as these lead directly or indirectly by way of official orders to delivery and performance delays. If the delivery or performance becomes impossible or unreasonable due to the aforementioned circumstances, the corresponding mutual obligations shall be suspended. This shall also apply if these events occur at a time at which the contracting party concerned is in default unless it has caused the default intentionally or by gross negligence. In such cases, the Supplier shall not be liable for impossibility of delivery or for delays in delivery either. If the delay in delivery/performance lasts longer than six months, the Buyer shall be entitled to reject corresponding deliveries or services and withdraw from the contract subject to a notice period of 2 weeks.
- 3.7 Our delivery obligations are subject to correct and timely delivery to us. We are therefore entitled to withdraw if we are not supplied by our Supplier for reasons for which we are not responsible despite a corresponding congruent covering transaction entered into with our Provider. The Supplier shall inform the Buyer without delay of the non-timely availability of the delivery item and, if it wishes to withdraw from the contract, shall exercise the right of withdrawal without delay; in the event of withdrawal, the Supplier shall reimburse the Buyer without delay for any corresponding consideration already received.
- 3.8 If the Supplier realises after entering into the contract that it cannot manufacture or process the ordered goods for technical reasons, it may withdraw from the contract. The Supplier shall without delay inform the Buyer of the technical impediments and exercise its right of withdrawal; in the event of withdrawal, the Supplier shall reimburse the Buyer without delay for any corresponding consideration already received.
- 3.9 If the Buyer is in default with the call-up, acceptance or collection of the goods, the Supplier shall be entitled to claim compensation for the damage incurred.
- 3.10 If the Provider is in default with a delivery or service or if a delivery or service becomes impossible for the Provider, for whatever reason, the Provider's liability for damages shall be limited in accordance with section 12 of these Terms and Conditions of Delivery.

4. Pricing

- 4.1 If, after the expiry of six months after entering into the contract, but before delivery of the goods, a significant change applies to certain cost factors, in particular the cost of wages, input material, energy or freight, the agreed price may be adjusted to a reasonable extent in accordance with the influence of the relevant cost factors.
- 4.2 All prices are in EURO plus the applicable value added tax.
- 4.3 Proofs produced by the Supplier as well as production equipment such as clichés, tools, moulds shall remain the Supplier's property and shall not be surrendered, even if the production costs are partially invoiced to the Buyer.

- 4.4 Any change to the text correction requires the production of new graphics. Should the Buyer make a change to the placed order, the Supplier shall invoice the cost price incurred without prior notification.
- 4.5 Production-related excess or short deliveries within a tolerance of 10 % of the total order quantity are permissible. The total price shall change in accordance with their scope.
- 4.6 If the Supplier allows the Buyer to cancel an order once it has been placed, the Buyer shall reimburse the cost of entering into the contract, including any commission incurred, and the Supplier's loss of profit.
- 5. Terms and conditions of payment
 - 5.1 Unless otherwise agreed, all invoices are payable within thirty days of the invoice date.
 - 5.2 After expiry of the period agreed in Point 5.1, the Buyer shall be in default of payment. During the period of default, the Buyer shall pay interest on the debt at a rate of nine percentage points p.a. above the respective base rate of interest. In addition, an entitlement shall apply to payment of a flat rate charge of EUR 40. We reserve the right to assert a claim further damages. When placing the order, the Buyer undertakes to provide precise information about the legal form and legal representation of its company. If the information is incomplete or unclear, the Buyer undertakes to bear the costs incurred by obtaining information from the commercial register and/or trade register, irrespective of the occurrence of default.
 - 5.3 If no business relationship has existed with the Buyer, no satisfactory credit information is provided, doubts about the Buyer's solvency arise or the Supplier has already had to apply for a default summons, the Supplier shall be entitled to demand full advance payment of the gross order value.
 - 5.4 If the Buyer's financial situation deteriorates significantly after entering into the contract, the Supplier may demand advance payment within a reasonable period and refuse performance until fulfilment. In both cases (5.4 and 5.5), the Supplier shall be entitled to withdraw from the contract and claim damages for non-performance in the event of refusal by the Buyer or expiry in vain of the deadline.
 - 5.5 In the event of non-acceptance of the order, in particular in the event of failure to co-operate, in the event of failure to release the text corrections for production in due time after expiry of the deadline, the Buyer undertakes to pay damages without prejudice to any further rights Section in accordance with Section 642 BGB (German Civil Code).
 - 5.6 The Buyer may only offset claims that are not disputed or have been recognised by the Supplier or have become res judicata or claims that are reciprocal to the Supplier's claims. The Buyer shall only be entitled to a right of retention if its counterclaim is based on the same contractual relationship.
- 6. Passing of risk
 - 6.1 The risk shall pass to the Buyer when the goods are handed over to the forwarding agent, carrier or other third party appointed to carry out the shipment. The handover begins at the same time as the loading process. This applies irrespective of who bears the freight costs. Any delay in acceptance on the part of the Buyer shall result in the passing of risk.
 - 6.2 If dispatch is delayed at the Buyer's request, risk shall pass to the Buyer upon notification of readiness for delivery.
- 7. Infringement of property rights
 - 7.1 If industrial property rights of third parties are infringed during the manufacture of the goods based on drawings, samples or other specifications of the Buyer, the Buyer shall render the Supplier exempt from all claims.
- 8. Advertising
 - 8.1 The Supplier shall be entitled to use the ordered products for advertising for its own and in doing so to refer to the name and logo of the Buyer.
- 9. Reservation of title
 - 9.1 The Supplier retains title to the goods until all claims arising from the current business relationship have been settled in full. Prior to the transfer of ownership of the reserved goods, a pledge or transfer of ownership by way of security is not permitted.
 - 9.2 In the event of breaches of duty by the Buyer, in particular in the event of default in payment, the Supplier shall be entitled, even without setting a deadline, to withdraw from the contract and demand surrender of the goods; the Buyer undertakes to surrender the goods.
 - 9.3 In the event of access by third parties - in particular seizures - to the goods subject to reservation of title, the Buyer shall draw attention to the Supplier's ownership and notify the Supplier without delay so that the Supplier can enforce its ownership rights.
- 10. Proofs and samples
 - 10.1 The Buyer must independently ensure swift release of the submitted proofs or release samples. The release must take place at the latest within 4 weeks after submission of the proofs.
 - 10.2 Upon release of the submitted proofs or release samples by the Buyer or the Buyer's waiver of their submission, the Supplier's liability for any errors based on the submitted proofs or release samples shall lapse.
- 11. Warranty and notice of material defects
 - 11.1 The Supplier shall be liable for compliance with objective requirements for the goods only if and to the extent that no agreement on quality has been concluded between the Purchaser and the Supplier. The subjective requirements to be complied with shall take precedence over the objective requirements.
 - 11.2 We reserve the right to insignificant variations in colour shade in the case of printing and/or surface colours based on the template, sample or colour specification.
 - 11.3 Slight burr formation on metal and plastic signs is due to technical reasons and does not constitute a defect.
 - 11.4 The Supplier shall manufacture within dimensional and pressure tolerances according to the DIN average.
 - 11.5 If the Buyer has released the series production on the basis of a design or sample, notification of such defects shall be excluded, which the Buyer could have detected upon careful examination of the design or sample.
 - 11.6 Insofar as the goods are faulty, the Supplier shall have the right, at its discretion, to remedy the defect by repair or deliver a fault-free item (subsequent performance). The Supplier shall only undertake to remedy the defect insofar as the Buyer has paid an appropriate share of the remuneration with consideration given to the defect. In the context of subsequent performance, the Supplier shall in no case be liable for installation or removal costs if and to the extent that the defectiveness of the goods at the time of installation was known to the Purchaser or remained unknown to the Purchaser due to gross negligence.
 - 11.7 If supplementary performance fails, the Buyer shall not be entitled to withdraw from the contract in the event of only a minor breach of contract, in particular in the event of only minor defects.
 - 11.8 The Buyer undertakes to inspect the delivered goods without delay upon receipt and notify us in writing of any obvious defects without delay; otherwise the asserting claims due to defects in the goods shall be excluded. Timely dispatch shall be sufficient to meet the deadline. The Buyer shall bear the full burden of proof for all claim prerequisites, in particular regarding the defect itself, the time at which the defect is identified and providing notification of defects in good time.

- 11.9 If the Buyer demands the rescission of the contract due to a defect after a failed supplementary performance, he shall not be entitled to any additional claim for damages due to the defect.
- 11.10 If the Buyer claims damages due to a defect after subsequent performance has failed, the goods shall remain with the Buyer if this is reasonable for the Buyer. The Compensation shall be limited to the difference between the purchase price and the value of the faulty goods. This shall not apply if the Supplier caused the breach of contract intentionally or by gross negligence.
- 11.11 Claims for material defects shall become statute-barred 12 months after delivery of the goods.
- 11.12 The Buyer undertakes to notify the Supplier without delay in writing of any defect or case of damage and in such detail that the Buyer can be readily assisted by the Supplier in remedying the defect.
- 11.13 Goods may only be returned by prior agreement.
- 12. Liability**
- 12.1 The Supplier shall be liable for damage to the Buyer caused intentionally or by gross negligence, the non-existence of a warranted characteristic of the item of performance, culpable detrimental effects on health, physical injury or the loss of life, or for which liability is provided for under the Product Liability Act, in accordance with the statutory provisions.
- 12.2 In the event of a breach of cardinal obligations, the Supplier shall also be liable for minor negligence. Cardinal obligations are those contractual obligations the fulfilment of which makes the proper performance of the contract possible in the first place and the observance of which the contracting party may regularly rely on, and the breach of which on the other hand jeopardises achievement of the purpose of the contract. In the event of a minor negligent breach of cardinal obligations, the Supplier's liability shall be limited to the damages foreseeable at the time of the entering into the contract, the occurrence of which must typically be expected.
- 12.3 In all other respects, liability - irrespective of the legal grounds - of both the Supplier and its vicarious agents and assistants is excluded.
- 13. Place of performance, place of jurisdiction and applicable law**
- 13.1 The place of performance for all obligations arising from the contractual relationship is the administrative headquarters of the Supplier and the court at the administrative headquarters of the Supplier shall have jurisdiction for all legal disputes, including in the context of proceedings relating to bills of exchange or cheques, if the Buyer is a merchant, a fully qualified merchant, a legal entity under public law or a special fund under public law.
- 13.2 The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG "UN Sales Convention") is excluded.
- 13.3 Insofar as individual provisions of these General Terms and Conditions of Delivery are or should become legally invalid for any reason, those legally valid provisions shall be deemed to have been agreed to fill these gaps which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these Terms and Conditions of Delivery if they had been aware of the regulatory gap.
- II General Terms and Conditions of Business for Software Solutions (Software General Terms and Conditions of Business)**
- 1 Subject matter of the contract and scope of application
- 1.1 smart-TEC GmbH & Co. KG, Kolpingring 3, 82041 Oberhaching (hereinafter referred to as "Provider" or "we") operates online platforms "and offers various software-based applications via them as its software-as-a-service solution, (hereinafter referred to collectively as "software solution" or "software solutions").
- 1.2 The Provider offers the use of software solutions only to entrepreneurs (Section 14 BGB) as customers (hereinafter "Customer"). Use as a consumer (Section 13 BGB) is excluded.
- 1.3 The Provider offers the necessary software solution for use by the Customer via a remote data connection.
- 1.4 These Software General Terms and Conditions of Delivery apply to the contractual relationship between the Supplier and its customers concerning the access granted by the Supplier to the software solution and the possibility of use granted within the framework of the functionalities offered as well as further specific services ordered in this context. The Software General Terms and Conditions of Delivery shall also apply to all future business relationships with companies, insofar as legal transactions of the same or a related kind are concerned, even if they are not expressly agreed again. At this point in time we object to inclusion of a Customer's general terms and conditions that contradict the Software General Terms and Conditions of Delivery.
- 1.5 The software solution is used exclusively on the basis of these General Terms and Conditions of Business, insofar as no differing or supplementary agreements have been agreed in writing (Section 126 BGB) by the Provider and the Customer in individual cases. Conflicting, supplementary or varying terms and conditions of the Customer shall not become part of the contract unless this is expressly agreed between the Provider and the Customer in writing (Section 126 BGB).
- 1.6 The subject matter of the contract is not domain administration, the operation of an e-mail system or access to the internet.
- 1.7 Our currently valid General Terms and Conditions of Business can be viewed and printed on the website <https://www.smart-tec.eu/de/agsb>.
- 2. Entering into a contract**
- 2.1 The presentation of functionalities on the internet or in other media by the Supplier does not constitute a binding offer by the Provider. This merely opens up the possibility of making a binding offer to enter into a contract for the use of the software solution. We do not undertake to accept such an offer.
- 2.2 The contract shall be entered into on the basis of an individual order. For this purpose, the Customer can request an individual offer from the Provider, which is based on these terms and conditions.
- 3. Services from the provider**
- 3.1 The Provider shall host the software solution ready for operation on external web servers for the Customer and shall make the software available to the Customer for use via the internet during the term of the contract.
- 3.2 The functional scope of the software solution is set out in the service catalogue, which is made available by the Provider at any time, as well as any optional functionalities stated in the individual order.
- 3.3 The Customer is given the opportunity to use the platform stored and executed on the servers of the provider or third parties for his own purposes via an internet connection during the term of the contract to the extent agreed in each case.
- 3.4 The Provider shall perform a daily backup of the server system. The backup shall be made on a rolling basis in such a way that backups are overwritten after one week. According to the same principle, a weekly backup will be made which will be overwritten after four weeks.
- 3.5 The Customer receives an access authorisation for the administrator, consisting of a user ID and a password. User ID and password can be changed by the Customer, whereby passwords must consist of at least eight characters, composed of upper and lower case letters, numbers and special characters.
- 3.6 Use of the software solution also regularly requires services in connection with the maintenance of contents and products of the Customer as well as other services for graphic or visual design. The Provider does not provide such services as part of the technical set-up and these are not part of the transfer of use either. The Customer can, however, agree on a corresponding individual support in the individual order with the Supplier, which shall be remunerated separately.
- 3.7 The Provider is not required to provide any instruction or training for the use of the software solution. The Customer may, however, commission a workshop, which shall be remunerated separately.
- 3.8 Adaptation of the software solution in line with the Customer's individual needs as well as any further developments of the software solution according to the Customer's ideas shall, at all times, require a corresponding agreement in the individual order and is only required subject to an additional fee according to the price list.
- 3.9 The Customer has no claim to the surrender of the source code of the software solution or individual applications of the software solution.
- 3.10 The Supplier is entitled, but does not undertake, to change the software solution and the services offered via the software solution during the term of the contract, in particular to adapt them in line with technological progress. This also includes the addition of new functionalities, changes to the user interface and adjustments to the back end. In this context, the Provider reserves the right to change services offered via the software solution without prior notice in order to offer the Customer a correspondingly optimised range of services provided the suitability of the software solution for the agreed purpose is thereby maintained and the optimised offer is reasonable for the Customer, taking into account mutual interests. In addition, the Provider is entitled to make changes, adjustments, restrictions, the removal of functionalities of the software solution and the services offered with it, if changed legal regulations or standards or new technical or scientific findings necessitate this. The type of implementation is the responsibility of the Provider. The Customer has no claim to the maintenance of individual specific functionalities or to their introduction.
- 3.11 The software solution, the computing power required for the use of the software solution and the storage and data processing space required to operate the software solution and the storage of the data entered by the customers shall be provided by the Supplier. The Provider is not required to establish and maintain the data connection between the IT systems of the Customer and the Provider. The Provider draws the Customer's attention to the fact that there may be restrictions or impairments in the use of the platform that lie outside the Supplier's sphere of influence. This includes, in particular, actions by third parties not acting on behalf of the Provider, technical failures beyond the Supplier's control and force majeure.
- 3.12 The Supplier shall provide the Customer with storage space within the scope of the contractually agreed use of the software solution. The scope of the storage space shall be agreed in individual contracts.
- 4. Obligations of the Customer**
- 4.1 In the event of malfunctions in the use of the Software Solution, the Customer shall notify the Provider thereof without undue delay.
- 4.2 The Customer undertakes to handle the data provided, such as access data to the server, with care and prevent misuse of the dial-up data by third parties. The Customer does not undertake to allow third parties to use the software solution. Should the Customer receive indications of improper use of the software solution by third parties, it must inform the Provider without delay.
- 4.3 The Customer shall not store any illegal content, content that violates the law, official requirements or the rights of third parties on any storage space provided or use such content in any other form when using the software solution and shall not use any programmes containing viruses or other malware in connection with the software solution.
- 4.4 The Customer shall refrain from any activity that is likely to impair and/or excessively burden the operation of the software solution, the server or the data centre or other infrastructures. This includes, in particular, the use of software, scripts or databases in connection with the use of the software as well as the automatic reading, blocking, overwriting, modifying or copying of data, unless this is necessary for the intended use of the software solution.
- 4.5 The Customer is not entitled to transfer any storage space made available to a third party for use, in part or in full, against payment or free of charge.
- 4.6 The Customer shall take its own measures to ensure the local backup of its own content, irrespective of any data backup by the Provider.
- 4.7 The Customer is responsible for checking the ratings, comments, uploaded content entered by the users of the software solution, if applicable, and for releasing them for online display.
- 4.8 The Customer undertakes to provide the Provider with the best possible and comprehensive support in the provision of the contractual services. This obligation includes, in particular, the timely provision of necessary information, documents and content or information requested by the Provider, in particular for the adaptation of content on the software solution.
- 4.9 The Customer is responsible for ensuring that the technical requirements for access to the software solution are met, in particular with regard to the hardware used, the operating system, the connection to the internet and the browser software, taking into account any technical specifications issued by the Supplier. In the event of further development or modification of the technical components by the Supplier or third parties (e.g. operating system software, browser software), it shall be incumbent on the Customer to make the necessary adjustments to the software and hardware used by the Customer.
- 5. Rights of use of the Customer**
- 5.1 The software solution is provided as-a-service. The possibility of use for the Customer is therefore limited to the use of the software solution via the internet. Further rights of use or exploitation under copyright law are not granted. Accordingly, the Customer is not entitled to reproduce or modify the software solution outside the scope necessary for operation of the software or to grant third parties access to the software outside the agreed contractual purpose.
- 5.2 This restriction of use shall not apply insofar as it concerns the use of software the use of which is permitted under another licence (e.g. open source software). Further rights of use or exploitation under copyright law are not granted.
- 5.2 Duplications are only permissible to the extent that is necessary for the intended use of the software solution. The Customer may not make any other reproductions, including in particular the printing or storage of the programme code.
- 5.3 The Customer is not entitled to transfer the software solution or individual contents of the software solution to third parties against payment or free of charge, temporarily or permanently.
- 5.4 The Customer is not entitled to make adjustments or further developments to the software solution. The Customer may not make any changes to the software solution. This does not apply to changes that are necessary for the elimination of errors, provided the Supplier is in default with the elimination of the error, refuses the elimination of the error or - in particular due to the application for or institution of insolvency proceedings - is unable to eliminate the error. Furthermore, the Customer is not entitled to reverse engineering.
- 5.5 Decompilation of the software provided is not permitted. Exceptions to this are reproductions of the code or translations of the code form, which are indispensable to obtain the necessary information for establishing the interoperability of an independently created computer program with the provided software or with other computer programs provided the requirements specified in Section 69 e (1) Nos. 1 to 3 of the German Copyright Act are met.
- 5.6 Insofar as the Provider designs internet sites for the Customer, the Supplier shall transfer to the Customer a non-exclusive, time-limited right of use to the pages created for the duration of the contractual relationship. If the Customer realises or delivers the design itself, the Supplier can continue to use the geometries and the basic functions of the software solution, but all rights to the design remain with the Customer.
- 5.7 The Customer hereby acknowledges trademark, name and patent rights with respect to the supplier of the software solution and any related documentation. The Customer shall not remove, alter or otherwise modify any copyright information or other similar proprietary notices in the software solution and any related documentation.
- 6. Granting rights to the Provider for data processing**
- 6.1 The contents stored by the Customer on the storage space intended for the Customer may be protected by copyright. The Customer grants the Supplier the right to make the content stored by the Customer on the server accessible for queries via the internet for the purpose of executing the contract, in particular to reproduce and transmit it for this purpose and be able to reproduce it for the purpose of creating data backups, insofar as this is necessary to provide the services required in accordance with the contract. To eliminate disruptions, the Supplier is also entitled to make changes to the structure of the data or the data format.

- 6.2 The Supplier is entitled to grant the rights in accordance with paragraph 1 to a third party (e.g. data centre operator) to the extent necessary for the performance of this contract.
- 6.3 The Customer shall, in any case, remain the sole owner of the data and may therefore demand from the Provider surrender of individual or all data at any time without the Provider having a right of retention. Surrender of the data shall be effected by electronic transmission via a data network or, by separate agreement, by handing over data carriers. Furthermore, the Customer is not entitled to receive the software suitable for use of the data. In the event of termination of the contract, sub-section 9.4 of these Terms and Conditions of Business shall apply.
- 7. Remuneration**
- 7.1 The Customer shall pay the Provider a one-off amount for the initial set-up of the software solution in accordance with the current price list.
- 7.2 The Customer shall also pay the Supplier a monthly fee for the use of the software solution, which shall be based on the current price list.
- 7.3 For other Customer-specific services, the Customer shall pay the remuneration agreed in the individual order, the determination of which is also governed by the current price list.
- 7.4 The current price list can be requested from the Supplier at any time. The prices stated in the price list are net prices plus the statutory value added tax applicable at the time.
- 7.5 The remuneration shall fall due for payment monthly in advance by the 1st workday.
- 7.6 The Provider is entitled to adjust the remuneration for the use of the software solution at its reasonable discretion (Section 315 BGB) and increase the agreed prices if further provision of the service without price adjustment is unreasonable for the Provider when weighing the interests of both parties. The Provider shall be entitled to further price increases if the last price increase was at least 6 months ago. The Supplier shall give the Customer one month's notice of the price increases in writing or by e-mail. Insofar as the price adjustment is not solely aimed at passing on a cost increase to the Customer for necessary advance services, the Customer may object to a price adjustment. If the Customer does not object to the price increase in writing or by e-mail within 2 weeks after the announcement of the planned price increase, this shall be deemed as consent to the announced price increase. The Supplier shall point this out separately in the announcement.
- 8. Suspension**
- 8.1 If and to the extent that the Customer uses the Software Solution contrary to its obligations in accordance with paragraph 4 or in excess of its rights in accordance with paragraph 5 or in the event of other serious breaches of duty as well as in the event of justified substantial suspicion of a culpable breach of duty, the Supplier shall be entitled to temporarily suspend the Customer's access to the software solution. The Customer will be notified without delay after the suspension of access.
- 8.2 Sub-section 1 shall apply mutatis mutandis if the Customer is in default of payment of the remuneration due for two consecutive dates or in default of payment of a substantial part of payments due.
- 8.3 If and to the extent that the Provider becomes aware that third parties are misusing the Customer's access, the Provider shall be entitled to block access to the extent necessary to prevent misuse by the third party. The Provider is already entitled to do this in the event of justified suspicions of misuse by third parties. Misuse by third parties is understood to mean access to the Customer's software solution by a third party. The Provider shall notify the Customer of such blocking without delay and at the same time give the Customer the opportunity to unblock the access in question by selecting new access data. The Provider shall only lift the blocking if it can be proven that there is no longer a risk of misuse by third parties. In case of doubt, the Customer shall be responsible for this.
- 8.4 Furthermore, suspension shall not result in the suspension of due payment obligations.
- 9. Term and termination**
- 9.1 The contract for the use of the software solution is entered into for a term of 12 months. It shall be extended by a further year in each case if it is not terminated with a notice period of three months before the expiry of the contract term.
- 9.2 In addition and beyond this, the right of the parties to terminate the contractual relationship by extraordinary termination for good cause shall not be affected.
- 9.3 Good cause for extraordinary termination shall apply to the Provider in particular if a) the Customer persistently breaches its obligations in accordance with paragraph 4 or in the event of other serious breaches of duty; b) the Customer uses the software solution beyond the rights of use granted in accordance with paragraph 5; c) in the event of less serious breaches of duty, the Customer continues or repeats the conduct complained of despite a warning; d) the Customer is in default with the payment of a due payment or with the payment of a not insignificant part of due payments for two consecutive dates.
- 9.4 Termination must be made in writing to be effective. Compliance with this form is a prerequisite for the effectiveness of the termination. Fax and e-mail do not satisfy this written form requirement.
- 9.5 In the event of termination of the contract, the Customer shall no longer have access to the software solution and its contents. However, the Customer may ask the Provider to make its content available temporarily by remote data transmission, however for a maximum of two weeks. This shall not affect any rights of retention. After expiry of four weeks after termination of the contract, the Provider shall be entitled to delete the Customer's content without further notice.
- 9.6 If - project orders have not yet been completed at the time of termination, including beyond the time of termination of the contract, the Provider shall continue to provide the commissioned services.
- 10. Warranty**
- 10.1 With regard to the granting of the possibilities of use of the software solution, the warranty provisions of tenancy law shall apply. No-fault liability in accordance with Section 536a (1), old version 1, BGB, is excluded. A warranty period of one year shall apply unless the Provider has fraudulently concealed a defect.
- 10.2 The Provider shall endeavour to offer trouble-free operation of the software solution and Customer access to the stored data. This is naturally limited to services over which the Provider has an influence. However, the Customer acknowledges that complete and uninterrupted availability of the software solution is not technically feasible. The Provider shall, however, endeavour to keep the software solution available as permanently as possible. However, there is no entitlement to this.
- 10.3 The Provider shall be at liberty to restrict access to the software solution in full or in part, temporarily or permanently, due to maintenance work, capacity concerns and due to events beyond the Provider's control.
- 11. Liability**
- 11.1 The Provider shall be liable without limitation for intent and gross negligence, for breach of a contractually granted guarantee and in accordance with the German Product Liability Act. The Provider shall be liable for minor negligence in the event of damage resulting from loss of life, physical injury or detrimental effects on the health of persons.
- 11.2 In the event of minor negligence, the Provider shall otherwise only be liable in the event of a breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the Customer may regularly rely on (cardinal obligation), and the amount of such liability shall be limited to the damage that was foreseeable and typical for the contract at the time of conclusion of the contract.
- 11.3 This limitation of liability shall also apply in favour of the Provider's vicarious agents.
- 11.4 The Provider shall not be liable for the loss of data insofar as the damage is due to the fact that the Customer has failed to perform sufficient data backups and thereby ensure that lost data can be restored with reasonable effort, unless the Provider undertakes to back up data in accordance with these Terms and Conditions of Business. Insofar as the Customer is responsible for loss of data, the Provider shall therefore be liable exclusively for the cost of duplicating the data from the backup copies to be made by the Customer and for restoring the data that would have been lost even if the data had been properly backed up.
- 12. Exemption**
- 12.1 The Customer shall indemnify the Provider and its employees or agents against all claims of third parties upon first request in the event of a claim for alleged or actual infringement of rights and/or violation of rights of third parties asserted by third parties in connection with the use of the software solution by the Customer.
- 12.2 The Customer undertakes to reimburse all possible costs incurred by the Provider as a result of third-party claims. Reimbursable costs also include the cost of a reasonable legal prosecution and legal defence which the Provider should incur to defend itself against claims by third parties.
- 12.3 This shall not affect any further claims for damages.
- 12.4 The Customer shall notify the Provider without delay of any third-party claims of which it becomes aware in connection with the use of the software solution. The Provider is entitled to take suitable measures itself to defend against claims by third parties or to pursue their rights. The Customer shall coordinate its own measures with the Provider in advance.
- 13. Data protection**
- 13.1 The use of the software solution may require the Provider to collect, process and use personal data. The Provider will handle all stored data with care and process and use it exclusively within the scope of any required data protection consent of the Customer. Any further processing and use of personal data shall only apply on the part of smart-TEC if this is legally permissible.
- 13.3 The nature and extent of the use of data by the Provider shall be communicated to the Customer in greater detail in a data protection declaration, which shall be made available by the Provider at any time.
- 14. Adaptation of the terms and conditions**
- 14.1 The Provider is entitled to amend or supplement provisions of these Terms and Conditions at any time, e.g. in the event of technical changes, functional extensions, adaptations or restrictions.
- 14.2 The Provider shall notify the Customer in text form of any amendments or additions to these Terms and Conditions at least six weeks before they come into force. The Provider shall provide a link where the new version of the General Terms and Conditions of Business can be viewed in its entirety with the notification of changes and amendments.
- 14.3 If the Customer does not object to amendments and supplements in text form within six weeks of notification, this shall be deemed to be consent to the amendment or supplement; the Provider shall make separate reference to this in the amendment notifications.
- 15. Contract takeover**
- The assignment of rights and obligations resulting from this contract or the transfer of this contract in whole or in part by the Customer to a third party require the written consent of the Supplier. This does not affect the provision of Section 354a HGB (German Commercial Code). The Supplier is entitled to transfer this contract, including any additional agreements, with all rights and obligations to a company of its choice. In the event of transfer of this contract to a company which is not an affiliated company of the Provider (Section 15 AktG (German Company Law)), the Customer shall have a special right of termination which must be asserted in writing within 14 days of notification by the Provider. The Provider shall refer to this separately in the notification.
- 16. Form requirement**
- 16.1 Ancillary agreements to these terms and conditions must be made in text form to be valid. This shall also apply to amendments to this text form requirement.
- 16.2 Unless otherwise provided for, contractual notices and declarations shall be made at least in text form.
- 16.3 Insofar as text form (Section 126b BGB) is agreed for the contractual relationship between the parties as a whole or for individual partial aspects, it shall be sufficient to send the declaration by e-mail or fax, whereby it shall be sufficient that the person making the declaration is named.
- 16.4 Insofar as written form (Section 126 BGB) has been agreed for the contractual relationship between the Provider and the Customer as a whole or for individual partial aspects, the transmission of the handwritten signed document by telecommunication, for example by e-mail with a PDF document or by fax, shall suffice in case of doubt. However, the receiving party is entitled to receive the original of the document.
- 17. Final provisions**
- 17.1 Should one or more provisions of these General Terms and Conditions of Business be or become invalid in full or in part, the legally effective provisions which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these Terms and Conditions of Delivery if they had been aware of the loophole shall be deemed to have been agreed in order to fill the loophole.
- 17.2 These Terms and Conditions of Business apply exclusively on the basis of German law and exclude the UN Convention on Contracts for the International Sale of Goods.
- 17.3 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, Munich shall be deemed the place of jurisdiction for all disputes arising from or in conjunction with these Terms and Conditions.

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