

# **GENERAL TERMS AND CONDITIONS OF BUSINESS**

## **1. SCOPE OF APPLICATION AND VALIDITY**

- 1.1 These General Terms and Conditions of Business (hereinafter referred to as "GTCs") shall apply for all deliveries and services provided by terraINfocus GmbH, Kaiseraugst, Switzerland ("terraINfocus"). They shall govern the internet offer and the conclusion, contents and handling of contracts connected herewith.
- 1.2 These GTCs shall apply unless other agreements have been made. Any general terms and conditions of business proposed by the customer shall only apply if terraINfocus has accepted them in writing.
- 1.3 By agreeing to receive services by terraINfocus before an individual contract has been made and with the submission of an offer, the customer shall accept these GTCs and acknowledge their unrestricted validity for the contractual relationship between the parties.

## **2. OFFERS AND THE INTERNET**

- 2.1 Offers by terraINfocus shall be non-binding unless they have been explicitly declared as binding by terraINfocus. The same shall apply to images, drawings or data offered in the internet or in another location, which shall be non-binding unless they have been explicitly declared as binding by terraINfocus.
- 2.2 terraINfocus explicitly reserves the right to change, extend or cancel the entire offer or parts thereof as well as the contents of the website without prior notice, or to discontinue the publication temporarily or for good.

## **3. EXECUTION**

- 3.1 terraINfocus shall deliver its services with great care and in conformity with the contract.
- 3.2 In cases in which the parties have explicitly agreed that a third party shall provide services, the customer shall assume sole responsibility and liability that the third-party services are provided by the third party, as well as for the adequate choice, instruction, monitoring and control of the third party.
- 3.3 terraINfocus shall, whenever possible, take into consideration the customer's requests for changing or extending the scope of services. terraINfocus shall, however, have the right to refuse its consent to such changes or extensions, in particular if the parties are not able to reach an agreement on the amendment of all relevant clauses of the contract beforehand.

## **4. REMUNERATION AND PAYMENT**

- 4.1 The prices for goods to be delivered are exclusive of freight, customs and packing.
- 4.2 For consulting services, remuneration shall, on principle, be calculated on the basis of time and effort incurred, and will be charged on the basis of individually agreed rates. If no individual service agreement has been concluded, the rates quoted for the relevant contract will apply, or, if no offer has been submitted

yet, such rates will apply as have been invoiced in comparable projects implemented by terraINfocus. Apart from that, the customer shall reimburse terraINfocus for any expenses incurred such as postage and travel expenses, and shall pay for any taxes, duties and fees incurred in connection with the fulfilment of the contract.

- 4.3 Unless otherwise agreed terraINfocus shall invoice its consulting services on a monthly basis.
- 4.4 If the performance of the contract has exceeded a period of six months, terraINfocus shall be entitled to adjust its rates to any risen costs.
- 4.5 All payments shall be made in CHF or EURO to terraINfocus itself or to a paying agent designated by terraINfocus. Payments shall only be considered to have been effected if terraINfocus can have free access to them.
- 4.6 If the customer fails to fulfil the payment conditions, he shall immediately and without reminder by terraINfocus considered to be in arrears and shall pay 5% interest on late payments.
- 4.7 The customer may only offset his claims against terraINfocus' claims if these claims are directed against terraINfocus itself and are uncontested, validated and legally undisputed. The offsetting of claims against claims which are directed against companies affiliated with terraINfocus is not permissible.
- 4.8 Should a significant deterioration of the customer's financial situation arise such that claims on the part of terraINfocus are at risk, in particular due to the filing of bankruptcy or composition proceedings, terraINfocus shall have the right to withdraw from such part of the contract which has not yet been fulfilled, to demand the provision of a security payment or matching payment with physical delivery.
- 4.9 In case of new orders (follow-up orders) terraINfocus shall not be bound to prices charged in former orders.

## **5. DELIVERY AND TRANSPORT**

- 5.1 Any delivery times quoted by terraINfocus shall be non-binding unless terraINfocus has declared them as binding in writing.
- 5.2 The agreed delivery time shall start with the receipt of all documents required for the execution of the order as well as with the receipt of the confirmation of payment of the remuneration due for the delivery.
- 5.3 Requests for changes on the part of the customer as well as unpredictable or inevitable events such as events which do not lie within the responsibility of terraINfocus such as force majeure, strikes and lock-outs, disruption of operations, delay in transit, governmental actions, as well as difficulties in obtaining authorisations shall extend the delivery time accordingly. This shall also apply if the difficulties occur with a presupplier or with the payment agent designated by terraINfocus. If the obstruction is not only of a temporary nature, both parties shall be entitled to withdraw from the contract. In such a case, neither party shall have the right to claim indemnity.

## **6. PLACE OF FULFILMENT**

Place of fulfilment for the delivery shall be the registered office of terraINfocus.

## **7. TRANSFER OF BENEFIT AND RISK**

7.1 The transfer of benefit and risk shall take place when the relevant goods are passed to the customer or to a forwarding company at the place of fulfilment. Even if, pursuant to an individual agreement, terraINfocus pays for transport and packaging costs, the risk shall pass to the customer when the goods are placed at disposal for shipment.

7.2 If shipment is delayed for reasons which lie within the customer's responsibility, the risk shall pass to the customer with the notification of readiness for shipment. If the consignment is stored at the customer's expense, terraINfocus shall charge at least 0.5% per month of the invoice amount of the delivery as storage fee. Apart from that, terraINfocus shall have the right, after having set a new appropriate deadline, to withdraw from the contract or to claim indemnity for non-performance of contract.

## **8. RIGHTS TO WORK RESULTS**

8.1 All rights to work results, in particular all intellectual property rights, to all documents created by terraINfocus such as cost estimates, proposals, sketches, calculations etc., as well as to all published objects produced by terraINfocus (such as graphic representations, sound documents, video sequences and texts) shall completely and at any time remain with terraINfocus. The reproduction or utilisation of such graphic representations, sound documents, video sequences and texts in other electronic or printed publications is not permissible without the explicit consent of terraINfocus. It is equally prohibited to utilise the work results produced by terraINfocus for other purposes than those agreed, or to pass on such work results to a third party or make them available to such third party.

8.2 In as far as terraINfocus shall be required to deliver or to provide objects or services in accordance with customer's drawings, models, samples or the like, the customer shall indemnify terraINfocus against any third-party claims arising from the utilisation of materials made available to the customer, and shall be liable towards terraINfocus for any subsequent damage, including any costs incurred in asserting legal rights, that may arise therefrom.

## **9. DATA SECURITY AND PRIVACY**

9.1 If the terraINfocus internet offer provides the possibility of entering personal or business data (e-mail addresses, names, addresses), the disclosure of personal data on the part of the user shall clearly be of a voluntary nature. The user shall explicitly grant the right to process the entered data to terraINfocus as well as to the paying agent designated by terraINfocus to handle payment transactions. When processing the data, terraINfocus shall comply with the Swiss legislation on data protection.

9.2 Customers shall at any time have the right to obtain information on their stored data as well as to the correction, blocking or deletion of their stored data free of

charge. terraINfocus shall not pass on any personal data of its customers (including home address and e-mail address) to any third party parties without the customer's explicit consent which can be revoked at any time. Excepted from this are our service partners who require the transmission of personal data for the processing of the purchase order (such as the mail-order-form commissioned with the delivery or the bank authorised to process the payment).

- 9.3 The utilisation and payment of all services offered shall – as far as technically possible and reasonable – also be permissible without the indication of such data or with the indication of anonymised data or of a pseudonym.

## **10. TERMINATION**

- 10.1 Temporary contracts shall terminate with the expiry of the agreed time limit.
- 10.2 Unlimited contracts shall either terminate with the fulfilment of obligations by terraINfocus or, in the case of premature notice, when the period of notice has expired.
- 10.3 Temporary contracts can be terminated by either party at any time with a notice period of two weeks to the end of the month.
- 10.4 For important reasons which would make a continuation of the contract unacceptable, both parties shall have the right to terminate both temporary and unlimited contracts with immediate effect. Notice shall be given by registered mail.
- 10.5 In case of premature termination of the contract, the agreements concerning data security and privacy (section 9) and rights to work results (section 8) shall remain in force. Apart from that, the services provided by terraINfocus shall be remunerated according to the time and effort incurred.
- 10.6 If the customer terminates the contract without notice without any important reason, he shall, in addition, pay as penalty an indemnity to compensate for the time and effort which terraINfocus would presumably have incurred by the next possible termination date, in accordance with the hourly rates published by terraINfocus.

## **11. WARRANTY**

- 11.1 Any defects, discrepancies in quantities and wrong deliveries shall be notified in writing to terraINfocus immediately, at the latest, however, 8 days after receipt of the goods, in the case of hidden defects immediately after their detection. Any warranty claims shall be forfeited if notice of defect is delayed. All warranty claims shall become statute-barred six months after the transfer of benefit and risk to the customer.
- 11.2 In case of a substantiated notice of defect, terraINfocus shall, at its own discretion, supply the goods or services as specified in the contract, or shall remedy the defect. In the event that the replacement delivery is also defective or the remediation of the defect is unsuccessful, unwarrantedly refused or delayed, then the customer shall be entitled to demand a commensurate price reduction or a change of contract.

## **12. LIABILITY**

- 12.1 terraINfocus shall only accept liability for damages which have been inflicted on purpose or by gross negligence. Apart from that, any liability shall be excluded if the customer or any third party interferes with work results without the prior written consent by terraINfocus, in case of faulty operation by the customer or third parties, as well as in case of an infringement of the customer's obligation to cooperate and minimise the damage, in particular, if the customer fails to fulfil the notification requirements under Clause 11 of these General Terms and Conditions.
- 12.2 terraINfocus shall not assume any liability for any actions or neglect which are attributable to auxiliary personnel.
- 12.3 In as far as legally permissible, the parties shall limit terraINfocus' liability to 20% of the invoice amount.
- 12.4 terraINfocus shall defend the customer against any claim of infringement of industrial property law filed in connection with the contractual use of the delivered goods, provided that the customer informs terraINfocus in writing at the latest within 20 days after being informed of such claim, while stating all known circumstances which are important for an assessment of the matter, and leaves it to terraINfocus to conduct legal proceedings, if required, and to conduct all negotiations to settle the legal dispute, and provided that the customer was not aware of the infringement of the industrial property right, would not have been obliged to be aware of it, and neither the customer nor any third party was partially responsible for the infringement of the industrial property right (including change of work result, utilisation under other conditions than those agreed). The defence by terraINfocus shall be limited to conducting legal proceedings as well as to the payment of damages (if any) to the third party.
- 12.5 terraINfocus does not provide any guarantee for the topicality, correctness, completeness or quality of the information provided, and shall not assume any liability for any material or non-material damage caused by the use or non-use of the information provided or caused by the use of faulty and incomplete information, provided that there is no evidence of wilful intent or gross negligence on the part of terraINfocus.
- 12.6 terraINfocus shall not assume any responsibility for the content of any websites of third parties to which direct or indirect reference is made within the scope of the internet offer. This disclaimer of liability shall apply for all links and references contained in its own internet offer, including any third-party contributions to discussion forums, link lists or mailing lists established by terraINfocus as well as to all other forms of data bases to the contents of which an external write access is possible.
- 12.7 Mandatory legal liability provisions shall be observed.

## **13. MISCELLANEOUS CLAUSES**

- 13.1 Should any provisions or formulations of these GTCs be or become invalid or ineffective, this shall not affect the validity of all other provisions thereof. The contracting parties shall be obligated to replace the invalid or ineffective

provision with such valid provision that as closely as possible reflects the purpose of the invalid or ineffective provision.

- 13.2 The customer shall not be entitled to assign any claims arising from this contract without the prior written consent of terraINfocus.
- 13.3 Both parties undertake to transfer their mutual rights and obligations to any legal successors they may have.

#### **14. JURISDICTION AND APPLICABLE LAW**

- 14.1 The general contractual clauses and any disputes which may arise therefrom or from the contractual relationship or from the utilisation of the website (including issues of statutory limitation, claims from tortious acts or interest receivables) shall be governed by material Swiss law, notwithstanding any principles of conflicts of law and under exclusion of the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980.
- 14.2 Any disputes arising from this contract or from the terraINfocus website shall exclusively be settled by the ordinary law courts at the domicile of terraINfocus.