

General Terms and Conditions for the Provision of Services by Helmholtz-Zentrum hereon GmbH (Hereon)



1. Scope of application and disclaimer

- 1.1. These General Terms and Conditions for the Provision of Services by Hereon (hereinafter “GTC”) apply to the provision of all deliveries and services by Hereon (hereinafter the “Contractor”) to the Customer, unless expressly agreed upon otherwise. In particular, they apply to the performance of research and development work and give special consideration to the inherent uncertainties of such work with regard to technical and economic feasibility.
- 1.2. These GTC apply exclusively to the provision of deliveries and services. Any other general terms and conditions shall only apply if they have been explicitly accepted by Hereon in written form. This still holds true even if the Customer makes reference to its own general terms and conditions; in which case an objection by Hereon shall not be necessary.
- 1.3. Hereon reserves the right to refuse to provide deliveries and services that are outside the scope of its statutory purpose.

2. Offers and confirmation of order

- 2.1. As a general rule, Hereon considers itself to be committed to its offer for a period of 30 days, unless a longer period of commitment has been agreed upon. The contract is concluded once the confirmation order is sent.
- 2.2. Verbal side agreements or arrangements only take legally binding effect if Hereon confirms them in written form. This written form requirement also applies in case of a change to the order.

3. Scope of services and performance target

- 3.1. The Parties shall define the main and ancillary services to be rendered by Hereon exclusively in written form. Any ambiguities in the interpretation of the scope of services shall be on the account of the Customer. Unless expressly agreed upon otherwise, the scope of services shall cover, among other things, the development, documentation and handover of the agreed service (hereinafter the “Work Result”). Hereon shall be due to ensure correctness according to the state of science and technology at the time the order is executed. Beyond that, however, Hereon shall not be due to ensure any general or specific usability of its Work Results or the results of its research and development. The Customer assumes sole and exclusive responsibility for use and application at its own risk.
- 3.2. If the subject of the order is the development or processing of software, Hereon shall not be due to provide any support, updates, maintenance or other supporting services.

4. Remuneration: Due date, offset and retention as well as entitlement to adjustment

- 4.1. The remuneration to Hereon shall be due for payment without deductions to the account specified by Hereon within no more than 30 days after the invoice was issued. The invoice must comply with the legal requirements, including the provisions of the ERechV [E-Invoice Ordinance].
- 4.2. The Customer may only offset a payment claim of Hereon if its counterclaim is undisputed or has been conclusively determined by a court of law; a right of retention must be based on the same contractual relationship.
- 4.3. Should Hereon, contrary to all expectations, find the remuneration agreed upon to be insufficient, owing in particular to significant

changes in market prices or the realization of natural hazards, to achieve a set performance target while still covering costs, even only in individual calculation items, Hereon shall present the Customer with an offer to continue the contract, including an adjusted order confirmation, without delay. The Customer shall be free to accept or reject the offer within two weeks (unless agreed upon otherwise). Should the Customer reject the offer, Hereon shall be released from its further performance obligations, but may demand compensation for the expenses incurred up to that point in time, § 670 BGB [German Civil Code]; otherwise, the contract shall be terminated for both Parties.

5. Reservation of rights and title

Hereon shall remain the exclusive owner of all Work Results and documentation handed over until payment for the service has been received in full (retention of title).

6. Liability

Hereon's liability for damages – for any legal reason whatsoever – in particular compensation in lieu of or in addition to performance, due to culpability in conclusion of a contract, impossibility of performance, delay, deficiency, unlawful acts and for other direct or indirect damages, is excluded, unless one of the following cases is at hand:

- a) Hereon has fraudulently concealed a defect;
- b) Hereon has made an explicit guarantee as to the quality of the goods or any procurement risk;
- c) loss of life, bodily injury or harm to health takes place that is attributable to willful misconduct or negligent breach of duty by Hereon or one of its legal representatives or vicarious agents;
- d) another form of damage is incurred that is attributable to willful misconduct or negligent breach of duty by Hereon or

one of its legal representatives or vicarious agents;

- e) damage is incurred resulting from negligent breach of cardinal obligations not already covered by lit. a) to lit. d) and lit. f). Cardinal obligations are those obligations whose fulfilment enables the proper performance of the contract and which the Customer regularly trusts will be complied with, and is entitled to do so. In this case, however, Hereon's liability is limited in sum to damages typical of the contract which were foreseeable upon conclusion of the contract; or
- f) Hereon is subject to mandatory legal liability, in particular liability under the German Product Liability Act (Produkthaftungsgesetz).

To the extent that Hereon's liability is excluded or limited under the above-mentioned provisions, this shall also apply to the personal liability of Hereon's executive bodies, legal representatives, employees, staff members and vicarious agents.

7. Risk assessment in cooperation with the Customer

Should the Customer collaborate in the provision of Hereon's services, the Customer shall fully act on its own responsibility and shall in particular remain obligated to conduct any risk assessments required by law (e.g. under § 3 BetrSichV [Occupational Health and Safety Ordinance], § 6 GefStoffV [Hazardous Substance Ordinance]) on its own and to act in accordance with their respective results, i.e. to detect and assess all relevant threats which those involved in the execution of the order could be exposed to in accordance with the statutory requirements in question, to report them immediately if necessary and to coordinate the execution of the order accordingly. It is incumbent upon the Customer to request

Hereon for any clarification that might be necessary for its own risk assessment, be it in writing or in text form.

8. Licenses

The Customer shall receive a simple, non-exclusive, non-transferable right to the use of all Work Results, regardless of whether or not they are capable of being protected under industrial property rights laws. Should the Customer require licenses beyond that, the Customer and the Contractor must conclude a licensing agreement in written form.

If necessary, the Customer shall be obligated to cooperate in the defense of all rights to the Work Results at its own expense or without cost reimbursement.

9. Software

The license granted under Clause 8 of these GTC does not apply to software products. The software license must be governed by a written agreement between the Customer and the Contractor. In general, software products are not part of the service to be provided.

10. Data protection

The statutory provisions on data protection apply.

11. Confidentiality

In all other respects, Hereon and Customer are obligated to maintain confidentiality even beyond the term of the contract, in particular with respect to matters made known to them within the scope of the contract. Data and information which is marked confidential shall be treated as confidential. Data and documents of one Contracting Party shall be returned to the other Party upon request or deleted without undue delay after completion of the respective order, unless said data/documents constitute part of the Work Result. The obligation to maintain confidentiality shall remain in effect for 3 years following the end of the contract.

12. Reverse engineering

The observation, dismantlement, opening, deconstruction, analysis, decompilation, disassembly, testing of the composition or production method is prohibited, be it by chemical or other means (reverse engineering), without the prior written consent of the providing party. This applies exclusively to information that is not yet accessible to the general public.

13. Legislation on foreign trade

- 13.1. The Customer shall comply with all requirements under the applicable national and international legislation on customs and foreign trade (hereinafter: "Legislation on Foreign Trade") and procure the necessary export licenses, unless the applicable Legislation on Foreign Trade requires Hereon or a third party (but not the Customer) to apply for the export licenses.
- 13.2. The Customer shall notify Hereon of all information and data which Hereon will require to comply with Legislation on Foreign Trade in the case of export, import and re-export, in written form within two weeks after conclusion of the contract and without delay in the event of changes, in particular:
 - all applicable export list numbers, in particular those according to Annex AL to the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung) or comparable items on relevant export lists including the "Export Control Classification Number" according to the "U.S. Commerce Control List" (ECCN), if the goods are subject to the "U.S. Export Administration Regulations" (EAR);
 - the statistical goods/customs tariff number according to the current merchandise classification under foreign trade statistics and/or the HS ("Harmonized System") code, and
 - the country of origin (non-preferential origin) and, if required by the Customer,
 - business declarations on preferential origin (for suppliers within the EU) or

- certificates on preferences (for non-EU suppliers);
- any other information Hereon requires for the purposes of compliance with Legislation on Foreign Trade. The nature of the goods may necessitate further customs-related forms, which the Customer shall procure if Hereon so requires.

13.3. If the Customer is in breach of its obligations (Clauses 13.1 and 13.2 GTC), it shall bear all expenses and damages as well as other penalties (e.g. additional charges for foreign import duties, fines) which Hereon may incur as a result, insofar as the Customer is responsible for the breach of obligations.

13.4. The conclusion and performance of the contract are subject to permissibility under Legislation on Foreign Trade.

14. Limitation period

The Customer's warranty rights shall expire one year after the Work Result agreed upon in the contract has been handed over.

15. Written form

15.1. Electronic means of transmission shall also fulfill the requirement for written form as defined by these GTC. Thus transmission via unencrypted E-mail shall suffice in this respect.

15.2. Addenda and side-agreements to the contract must be made entirely in written form in order to have legal effect, and must be marked as such. The same shall also apply to the waiver of the written form requirement or amendments to the written form requirement.

16. Miscellaneous

The law of the Federal Republic of Germany shall apply. Place of performance is Geesthacht. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.