

1. Subject matter of the Agreement

(1) The following Terms and Conditions shall form the basis for the initiation and conclusion of contracts between MATRIX42 AG (in short “Matrix42”, “us” or “we”) and you (hereinafter “Customer”) for the performance of training courses (hereinafter in short “Training”) and for consulting, installation, customisation or operation of software acquired or to be acquired from us (hereinafter in short “Consulting”; training and consulting together hereinafter referred to in short as “Services”); these Services shall be remunerated on an hourly or daily basis. These Terms and Conditions shall apply also in the case of Services which are provided in addition to Software as a Service (e.g. accompanying training, consulting).

These Terms and Conditions shall also apply for all future services, even if they are not expressly agreed again. Differing terms and conditions of the Customer that we do not expressly acknowledge, shall not be binding for us, even if we do not expressly reject them.

(2) The scope of the Service and the remuneration for this shall be determined in the respective Service offer. If there is no explicit agreement on the amount of remuneration, the rates of remuneration for services that are specified in our general price list shall be regarded as agreed. Unless stated explicitly otherwise in the Service offer, we do not assume any responsibility for the project and/or its success. This shall be the responsibility of the Customer. We do, however, undertake to provide the Services according to the basic principles of professional practice.

(3) Section 312e (1) Nos. 1, 2 and 3 as well as Section 312e (1) sentence 2 of the BGB (German Civil Code), which provide for certain obligations of the entrepreneur in the case of contracts in electronic commerce, shall be excluded.

2. Binding period/setting of deadlines

(1) We shall be bound by our offers for 14 days.

(2) Where it is legally necessary to set ourselves or the Customer a reasonable deadline, this shall be at least 2 weeks.

3. Employees

(1) The staff employed to perform the service shall be selected by us. The Customer shall be entitled to the provision of services by a particular employee only if this has been expressly agreed. The naming of a project manager or a contact person in the offer does not satisfy these requirements.

(2) The Customer shall have no right to instruct staff employed by us.

4. Duties to cooperate

(1) Where necessary for the performance of the contract, the Customer shall make available to us all information and items at its disposal and create for us all the necessary conditions in its sphere of operations for the provision of our service.

(2) Where the Service is performed at the business premises of the Customer, the latter shall make sufficient work space available free of charge and grant us access to the necessary IT systems.

(3) For the provision of our Service, we shall be dependent upon the Customer fulfilling its obligations to cooperate. If it fails to do this, and this should result in delays and/or additional expenses, we may request a change in the remuneration and in the schedule, if such has been agreed.

5. Rights of use

The Customer shall acquire, upon payment of the agreed remuneration, a non-exclusive, non-transferable right, unrestricted in terms of time and space, to use the service results that we have achieved within the agreed Service for internal customer use within the framework of the contractually agreed purpose. In all other respects, rights shall remain with us.

6. Operational disturbances

Operational disturbances, insofar as they were not predictable, and strikes, lockouts, official orders and cases of force majeure shall release us from our obligation to perform the Service for the duration of the disturbance and to the extent of its effect. If as a result the provision of the Service is delayed by more than 1 month, either party shall be entitled, under the exclusion of all further claims, to terminate the contract with respect to the Service concerned.

7. VAT / surcharges for night work and work on Sundays and public holidays / time sheets / travel expenses / payment deadlines

(1) The basis for the remuneration of our Service shall be our respective offer. Insofar as VAT is not already indicated in the offer, this shall be added at the statutory rate to the remuneration specified in the offer.

(2) The agreed hourly and/or daily rates shall increase by 50% if the Service is to be performed at the Customer's request on a Saturday or in the time between 18.00 to 08.00 hours; they shall increase by 100% if the Service is performed at the Customer's request on a Sunday or public holiday.

(3) If, at the request of the Customer, an agreed deadline for the implementation of the Service has to be postponed, the Customer shall compensate us for the travel expenses we have to pay to a third party, if we were not able to cancel or rebook the trip free of charge. If time has already been spent in the planning and/or implementation of this Service, this shall be charged to the Customer also.

(4) The Customer shall confirm the hours/days performed by the employee deployed at the business premises of the Customer at the end of a day and/or a week with its signature in writing. This written confirmation shall form the basis for our invoice to the Customer.

(5) Travel time shall be charged at the agreed hourly or daily rates.

(6) Travel costs and expenses shall be reimbursed to us by the Customer in addition to the agreed remuneration against proof of these.

(7) Unless expressly agreed otherwise, all payments shall be settled free of charge by bank transfer to our payment office in Neu-Isenburg. Training courses must be paid for in advance within 14 days of receipt of invoice; all other Services shall be paid within 14 days after provision of the Service and the invoice, without deduction.

8. Default in payment / set-offs and retention

(1) In the case of default in payment or if there is reasonable doubt as to the solvency of the Customer, we shall be entitled - without prejudice to our other rights - to demand advance payment for Services not yet performed, to revoke any payment periods granted and to make all claims from the business relationship due immediately. Our obligation to provide the Service shall cease for as long as the Customer is in default with a payment. The Customer in default shall compensate us for all dunning, collection and information costs.

(2) The Customer may only set off or assert a right of retention if the counterclaim is recognised by us as undisputed or is legally established.

9. Training courses

(1) The Customer shall instruct any participants it sends to training sessions not to use any data media brought in, to respect the safety rules and regulations of the venue and to follow the instructions of the trainer. The technical facilities, including the software, may only be used for training purposes.

(2) For the right to cancel or withdraw in the case of training, please see point 10 (3) and (4).

10. Withdrawal / termination / postponement and/or cancellation of training dates

(1) The Customer may withdraw from the contract in accordance with legal provisions, insofar as we are responsible for the delay in the Service. The Customer shall be obliged when requested by us to state within 2 weeks whether, due to the delay in the Service provision, it wishes to withdraw from the contract or continue with the contract and/or demand compensation.

(2) A contract for an employee performance (not, however, for training) may be terminated by the Customer at any time. The following should, however, be considered: If the Customer terminates without good cause or we terminate for a good cause for which the Customer is responsible, we shall retain entitlement to the full remuneration agreed less the actual expenses saved as a result of the termination of the contract. We shall be allowed to take into account as a saving only that which was acquired through the deployment of our employees elsewhere or was not acquired at all.

(3) If a training course is conducted exclusively for one Customer, and

- the agreed training date is cancelled by the Customer up to 28 days before the commencement of the training, the Customer shall be required to pay only the costs already incurred, for example room hire or travel expenses, against proof of these, unless the Customer agrees on a new training date with us within the next 6 months of the cancelled date. If this does not happen, we shall be entitled to withdraw from the training contract and to claim a flat rate of 20% of the training fee as damages;
- the agreed training date is cancelled by the Customer up to 27 days before the commencement of the training or later, we shall be entitled to withdraw immediately from the training contract and demand, in addition to the costs incurred in particular for room hire and travel expenses, a compensation payment of 50% of the training fee.

(4) If training is conducted for several Customers,

- each Customer may withdraw from the training contract up to 14 days before the commencement of the training against payment of a processing fee of EUR 100 per participant;
- a withdrawal within 13 to 8 week days before the commencement of the training shall only be possible against payment of 50% of the remuneration fee;
- a withdrawal 7 days or less before the commencement of the training shall only be possible against payment of the full remuneration fee.

11. Liability

(1) We shall be liable for damages, insofar as these were a) caused by wilful or gross negligence on our part, or b) caused by slight negligence on our part and result from significant breaches of obligations that jeopardise the achievement of the purpose of the contract, or from the breach of obligations, the fulfilment of which is a prerequisite to enable the proper implementation of the contract and upon compliance of which the Customer should be able to rely.

In all other respects, our liability shall be excluded, irrespective of legal basis thereof, unless we are liable as mandated by law, in particular on account of injury to life, body or health of a person, the assumption of an express guarantee, fraudulent concealment of a defect or in accordance with product liability law. Guarantees from us shall be made in writing and shall be designated as such.

(2) In the case of paragraph (1) b), our liability shall be limited to € 500.000.

(3) The limitations of liability set out in paragraphs (1) and (2) shall also apply to claims against our employees and agents.

(4) For the recovery of data, we shall be liable only if the Customer has ensured that this data is reproducible from data sets in machine-readable form with reasonable effort according to the standards of proper data processing.

12. Data protection

The Customer consents to its data, including the personal data of its employees, being used for data processing for the fulfilment of the contract. The Customer shall be responsible to Matrix42 for obtaining any consent necessary from its employees for the use of the data.

13. Applicable law / place of jurisdiction

(1) The legal relationship between the Customer and us shall be subject to substantive German law.

(2) The place of exclusive jurisdiction for all disputes between the parties arising from or in conjunction with the business relationship shall be Hamburg, insofar as a different jurisdiction is not mandatorily prescribed by the law.