

GTCs HICO-GROUP – as of 2020-07

Article 1 Scope of these provisions

1. These GTCs shall apply to all present and future goods and services of the contractual parties, in particular, to execution, content and performance of IT services and the supply of software licenses. HighCoordination supplies goods and performs services only according to the following terms and conditions. The customer's terms and conditions of purchase which contradict these GTCs shall not be acknowledged by HighCoordination.
2. Any goods and services shall be determined in individual agreements based on these GTCs. Offers from HighCoordination shall always be non-binding and subject to confirmation. Orders shall only be considered as accepted, if they are confirmed by HighCoordination in writing or if the goods are supplied. Technical and design-related discrepancies from the descriptions and data in brochures, catalogues and written documents, such as changes to model, structure and material in the course of the technical progress or in the case of change to the market situation shall be reserved and no rights against HighCoordination can be derived by the customer from the above.

Article 2 Terms and conditions of payment

1. All prices are exclusive of statutory VAT applicable at the time of concluding the contract. If repeated or permanent services are to be performed, the refund of VAT applicable at the time when the relevant performance is delivered shall be decisive.
2. One-off contractual payments (one-off user fee for software, purchase price for hardware, fees for one-time services) shall be payable 14 days after the performance of service or receipt of goods. Payments must be effected on the due date without any deductions.
3. In the case of services the said remuneration shall be based on an 8-hour working day. Expenses must be paid according to the level of expenses specified in the offer. Costs of extra services and services resulting from incorrect or incomplete information by the customer, non-verifiable claims for defect, or inappropriate use of the system shall be borne by the customer.
4. HighCoordination is entitled to offset the payments against other receivables from the customer whose payment shall be offset against the oldest receivable, then the costs, interest and finally, the principal amount.
5. The customer can offset the claims of HighCoordination only against the counter-claims which are determined as final and binding or undisputable.

Article 3 Retention of title

1. The supplied goods which are covered by the contract shall remain the property of HighCoordination until all goods supplied to the customer by HighCoordination are fully paid for. This shall also apply to all copies of software which are transferred on the data storage media or online, and to the accompanying material. If rights of use to software are granted only, the

above-mentioned provision shall apply accordingly to the data storage media which are provided.

2. The customer is entitled to process, modify the goods which are subject to the retention of title or otherwise adjust them to its own needs in the ordinary course of business, if the customer does not delay payment and it does not contradict the license conditions by HighCoordination. Pledge or transfer by way of security are not permitted. Claims arising from resale or other legal grounds shall be assigned by the customer to HighCoordination upon signing the contract to the extent which reflects the HighCoordination's share in joint-ownership. HighCoordination provides the customer with the right (revocable at any time) to collect the claims assigned to HighCoordination on its own account and in its own name. Upon request of HighCoordination, the customer shall disclose the assignment and provide the relevant and necessary information and documents.
3. In the case of third party rights to the goods which are subject to the retention of title, in particular as regards pledges, the customer must indicate the title of HighCoordination and immediately notify the latter thereof. If the customer acts in breach of the contract, in particular, if it delays payment, HighCoordination shall be entitled to collect the goods which are subject to the retention of title at the cost of the customer or, if applicable, demand the customer to assign the claims for restitution from third parties. The collection of goods which are subject to the title of retention by HighCoordination shall not constitute withdrawal from the contract. Processing or conversion is always made by the customer for HighCoordination as the producer, but without any obligation. If the title or joint title of HighCoordination ceases to exist due to combination, mixing or processing, the title or joint title of the customer to homogenous goods shall be transferred to HighCoordination in proportion to the value (invoice value without statutory VAT applicable at any time). In this case, the customer shall preserve the title or joint title of HighCoordination free of charge.

Article 4 Delay in payment

1. If the customer delays payment of more than 25% of the price without statutory VAT for more than 4 weeks, HighCoordination can demand the return of the hardware and software and dispose of it otherwise without prejudice to any other rights.

Article 5 Supply of goods

1. The software which must be supplied shall be provided on the data storage media specified in the offer. HighCoordination shall select the method of shipment and type of transport packaging at its reasonable discretion. Delivery and transfer of risk shall take place upon handover of software, including the accompanying material, to the customer, except for the case when it is shipped. In the case of shipment, the risk shall be transferred to the customer, as soon as the parcel has been handed over by HighCoordination to the carrier. If the shipment is delayed or prevented without any fault of HighCoordination, the risk shall be transferred to the customer when the latter is notified that the goods are ready for shipment. The goods shall be insured

against transport damages only upon clear request and at the cost of the customer.

2. The customer must timely accept the goods and services of HighCoordination. The periods and dates stated by HighCoordination are non-binding, unless it has been otherwise clearly agreed in writing. Moreover, all supply periods are subject to reservation of correct and timely deliveries to HighCoordination. In the case of prolonging the period of supply or service which is not attributable to any of the parties, the customer shall not be entitled to any compensation claims based on the above.

Article 6 Liability for material and legal defects

1. If the newly-manufactured products, products provided for use or their parts sold by HighCoordination have defects at the time when they are handed over or made available which cancel or significantly reduce the value or fitness of the product for the contractual use according to the description of service, the customer can only demand the improvement within the framework of liability for material and legal defects first. The products are not considered defective, even if they essentially do not comply with specifications and documentation in their version concerning the affected software.
The attempt at improvement shall be excluded, if the improvement would involve disproportionate effort. Basically, the improvement shall be made free of charge. If the customer moved the purchased products to another location as its place of residence or business address after delivery, the customer must bear additional costs resulting from the improvement, if moving the products does not comply with their use according to the contract. If the right to improvement is excluded or if the defects cannot be removed by the improvement within 3 months after the notification, the customer can assert the statutory guarantee rights, in particular, demand a reduction of the license fee.
2. Consultation and other services are provided by HighCoordination to the best of their knowledge, according to the standards published for the relevant software and service and with the objective to enable the customer to perform its work with the product. A guarantee for successful services shall not be given.
3. A complaint about defects must be made in writing as accurately as possible and immediately after the first malfunction or error message, including the information about the operating procedure which led to the malfunction. Own attempts to remove the error usually lead to more serious damages which HighCoordination is not liable for. In particular, HighCoordination shall not be liable for the damages which are attributed to incorrect handling, operation or input, improper installation or use, unauthorised access to source code and use with unapproved operating system or other software in breach of the contract. The commercial obligation to inspect and report defects shall remain unaffected. If the defect which has been complained about transpires as a result of the above-mentioned circumstances, the customer must refund the expenses of HighCoordination incurred as a result according to the relevant rates in the pricelist for services which is applicable at that time. However, HighCoordination does not have any obligation to perform the relevant service. This shall apply accordingly to the cases when improvements of

HighCoordination have been impeded, obstructed or expanded more than insignificantly.

4. The claims for material defects are subject to a 12-month statute of limitations.

Article 7 Liability

1. HighCoordination shall be liable for a deliberate act and serious negligence, initial incompetence, delay and incapacity, provision of guaranteed properties, also regarding the vicarious agents, however any liability shall be limited to foreseeable, direct, average damages typical for such contracts. Any other liability is excluded. This shall also apply to the loss of data and other consequential damages. In the cases of minor and ordinary negligence the liability shall be limited to the amount of one-time fee for the obtained licenced software or to the contract value of a partial service in the course of which the damages have been incurred. Moreover, the liability for data reconstruction is subject to the condition that the data was fully secured and sufficiently updated by the customer and that it is possible to reconstruct data at reasonable expense.

Article 8 Obligations of the customer

1. The customer undertakes to meet all requirements which are necessary for the performance of the provider services agreed in the contract. These requirements cover, in particular, customer's providing the employees of HighCoordination with working areas, including all necessary equipment as needed and to a sufficient extent, providing HighCoordination with unobstructed and sufficient computing time with necessary priority as needed, providing test data and other resources necessary to complete the works on time, providing HighCoordination and its project staff with all information necessary for the service to the full extent, truthfully and without being prompted to do so, timely providing all documents, approvals, software parts, etc. which must be supplied and produced, making its employees available for support to HighCoordination, and ensuring system operation and maintenance.
2. The effectiveness of products and consulting services provided must be confirmed by the customer with a declaration of acceptance. The acceptance is also deemed to have taken place, when the installation by HighCoordination is declared as finished, the customer uses the product/products and does not complain about defective or insufficient service within two weeks in writing. The customer bears an unlimited liability for the breach of these contractual obligations. HighCoordination shall only be bound by the obligatory supply periods and dates according to Article 5 of these GTCs, if the customer has fulfilled its obligations under Article 8.

Article 9 Industrial property rights of HighCoordination

1. HighCoordination shall remain the owner of all rights to the software transferred to the customer, rights to all parts thereof, or to the software which is entirely or partially derived from the software, including any associated materials. This shall apply, even if the customer changes the software to the

extent permitted by the contract or combines it with own software or such third party software. HighCoordination is free to use and exploit, in particular, publish, copy, expand, process, change the work results, such as computer software, ideas, methods, procedures and know-how obtained within the framework of the customer's order or through its development, or integrate them with or incorporate them in other software under its own name at its own discretion. The customer must not remove the present identifications, industrial property rights notes or proprietary notices of HighCoordination from the software, and the customer must also include them in the created copies, if applicable. HighCoordination indemnifies the customer against all third party claims due to the breach of industrial property rights to the software developed and transferred by HighCoordination in the versions which are compliant with the contract. If such liability arises, it is required that the customer would not make any written or verbal statements to third parties about the breach of the industrial property rights, in particular, the customer would not recognize any rights or circumstances, and would not accept any liability. Moreover, the customer must not combine the software with third party software without prior written consent of HighCoordination and must not use the software otherwise than for the intended purpose.

HighCoordination is entitled to introduce necessary software changes on the customer's premises at its own cost based on a third party claim for industrial property rights. The customer cannot derive any contractual rights from the above. The customer must immediately notify HighCoordination in writing, if the breach of industrial property rights and copyright in the product supplied by HighCoordination is indicated to the customer. The customer can use the software only for its own purposes, if it has not been clearly agreed otherwise. The customer can make copies of the transferred software only for the back-up purposes. Copies of transferred documents, such as documentation, user manuals, etc. can only be made with prior written consent of HighCoordination. The customer shall be liable to HighCoordination for all damages resulting from the breach of the above-mentioned obligations of the customer.

Article 10 Advertisement

1. From the time when the contract is concluded, HighCoordination is entitled to refer to the existing contractual relationship and advertise it to the public by including the company name of the customer on the list of references.

Article 11 Non-solicitation clause

1. The customer undertakes not to poach any staff of HighCoordination during the period of cooperation within the framework of the project and for the period of six months afterwards, irrespective whether it is for a permanent job or as freelance staff. The customer must pay the contractual penalty of EUR 8000.00 to HighCoordination for each case of culpable breach. Assertion of claims for any other damages over and above the penalty shall remain unaffected.

Article 12 Assignment of rights

1. The customer can assign the rights under the contract to third parties only with prior consent of HighCoordination. HighCoordination is entitled to have all obligations fulfilled by third parties on its behalf. In his case, HighCoordination further ensures as a contractual partner to properly perform its contractual obligations towards the customer and the customer accepts the service provided by HighCoordination.

Article 13 Term and termination of contract

1. The term of contract shall be determined by a special contract which will be concluded on the basis of these GTCs. The statutory provisions shall apply to the early termination of this contract.

Article 14 Place of jurisdiction

1. Radolfzell (Konstanz Regional Court) shall apply as agreed place of jurisdiction for business customers.

Article 15 Final provisions

1. Later supplements or amendments to the concluded agreements must be in writing. The verbal renouncement of the written form shall be excluded. The law of the Federal Republic of Germany shall apply. The regulations of the uniform law on the international sale of goods shall be waived. If individual provision or several provisions of these terms and conditions or further conditions and agreements based on them are or become ineffective, or if they contain a loophole, this shall not affect the validity of other provisions. The economically reasonable and permitted regulation which the contractual parties intended or would have intended according to the sense and purpose of the terms and conditions, if they had taken the ineffectiveness or loophole into account, shall replace the ineffective provision or fill up the loophole.

Links

Team (<https://www.highcoordination.com/about-us/>)
Partner (<https://www.highcoordination.com/about-us/>)
Career (<https://www.highcoordination.com/careers/>)
Technologies (<https://www.highcoordination.com/what-we-do/>)
Contact (<https://www.highcoordination.com/contact/>)

Legal notice (<https://www.highcoordination.com/legal-notice/>)
AGBs (<https://www.highcoordination.com/agbs/>)
Data protection guidelines (<https://www.highcoordination.com/data-protection-guidelines/>)

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