General Terms and Conditions for contractors of m3 management consulting GmbH

1 Scope of application

1.1 projects of m3 management consulting GmbH

The following General Terms and Conditions of m3 management consulting GmbH (hereinafter referred to as "General Terms and Conditions") shall apply to orders within the scope of IT and/or consulting projects which m3 management consulting GmbH (hereinafter referred to as "m3") commissions to contractors. The commissioning can relate both to m3's own internal projects and to projects which m3 carries out for third parties (e.g., end customers or clients of m3). In particular, this may involve system and/or application consulting, strategy, process, management and/or organisational consulting, technical consulting, (IT-)training and seminars, the development of individual, self-contained programmes or programme parts, the planning, implementation, further development and/or maintenance of programme systems, programs and programme parts as well as other consulting- and IT projects.

1.2 Contractor

The contractor has above-average experience in the IT and/or consulting sector as well as in the project specific technical scope and knows the industry within which m3 operates. If the contractor is a natural person, the contractor assures m3 that he is an experienced professional in the IT and consulting field and has project and team experience. The qualification and experience stated towards m3 shall be decisive for the selection and commissioning.

1.3 Commissioning

m3 commissions the specific services to the contractor exclusively on the basis of these General Terms and Conditions. The parties have not made any other agreements and, in particular, no general terms and conditions of the contractor shall apply.

The commissioning is generally carried out by concluding an individual agreement ("project agreement"). The project agreement contains a description of the project, the services, and results to be provided by the contractor and all other points relevant to the specific project agreement, such as deadlines and remuneration.

The contractor does not have a right to conclude project agreements with m3 and m3 has no obligation to accept services offered by the contractor.

2 Legal relationship between the parties

2.1 Legally independent

The contractor is legally and economically independent. He shall act for m3 in its own name and for its own account. The contractor is not authorised to legally represent m3.

2.2 Personal responsibility

The contractor shall be personally responsible to provide the contractually owed services.

2.3 Technical instructions

Instructions may only be given to the contractor in technical and practical matters and only insofar as this necessary due to the nature of the project and its requirements.

3 Service provision

3.1 General requirements

The contractor is obliged to implement and fulfil the project agreements agreed with m3 diligently, on time and in accordance with the latest state of science and technology as well as the agreed functional or other specifications. He shall observe the respectively applicable statutory and administrative regulations and the operational rules and regulations of m3, in particular the security policies applicable to him in the latest version. The operational rules and regulations will be made available to the contractor on request.

Where applicable, the contractor shall maintain a quality management system, e.g., in accordance with DIN EN ISO 9001-9003. m3 is entitled to review the system after consultation with the contractor.

3.2 End customer contract

Insofar as the contractor's services are intended for an end customer of m3, the essential parts of the end customer contract shall apply insofar as they are of technical and legal significance for the determination of the contractor's services. The respective project agreement shall specify if and to which extent provisions of the end customer contract shall apply. If the end customer contract does not exist when the project agreement is concluded, it may be included subsequently by agreement of the parties.

3.3 Place and time of performance

The contractor is generally free to choose the place of performance and to allocate his time in relation to the provision of services. The structure and organisation of the project may make it necessary for the contractor to provide services on site at m3 or its end customers due to technical reasons. When performing on-site at m3, the contractor shall observe any requirements such as house rules and security policies in their latest version. The specifications will be made available to the contractor on request. If it is required within the scope of the respective project that the contractual services shall be performed at m3's site and/or the end customers site, the contractor will agree with m3 on the concrete times he will provide the services on-site. For the avoidance of doubt this shall not affect agreed deadlines.

3.4 Quality management

Upon conclusion of the respective project agreement, the contractor shall make all reasonable efforts to ensure that m3 can meet its obligations towards the end customer with the contractor's services. In particular, the contractor is obliged to:

a. immediately forward to m3 all information relevant for the contractual relationship between m3 and the end customer which he obtains during the project,

b. observe dates and deadlines, including those set by the end customer vis-à-vis m3 and subsequently communicated to the contractor by m3.

3.5 Contact person

m3 and the contractor - if the contractor is a company - shall each appoint a contact person for the other party. This person shall be the responsible contact person in relation to all matters concerning the project agreement. m3 may deliver messages to this contact person with effect for the contractor.

3.6 Assignment, subcontracting

The contractor shall neither transfer the rights and obligations arising from project agreements to third parties nor involve third parties in the provision of services without the prior express written consent of m3. If m3 consents, the provision of services by third parties is only permitted under the condition that the obligations of the contractor vis-à-vis m3 remain unaffected. The contractor shall ensure that, with regard to the subcontracted services, the same obligations exist between him and the third party as between the contractor and m3 and shall be responsible for the third party's compliance with these obligations towards m3 as for its own obligations.

3.7 Information about performance status

The contractor shall regularly inform m3 about the status of its performance, the progress of the project implementation, compliance with the performance specification and the requirements for the programmes to be developed. For this purpose, m3 shall be granted access to all documents and records relevant for the project agreement. m3 shall be entitled to request status reports from the contractor at any time. m3 shall also be entitled to name a third party, who is professionally or contractually obliged to confidentiality, to exercise the contractor's information and access rights on its behalf.

3.8 Return

Upon acceptance, but at the latest upon termination of a project agreement, the contractor shall return all programmes (including source programmes), documentation, records, documents, electronic data and files and other tools which have been developed while implementing a project agreement or which the contractor has received in this context, including all duplicates, to m3 or to a third party designated by m3. The contractor shall not be entitled to a right of retention in this respect.

4 Information and inspection obligations of the contractor

4.1 Performance specification

Prior to the realisation of the project, the contractor shall check the performance specification on which the project agreement is based for gaps and ambiguities as well as for apparent errors and difficulties of implementation.

If the contractor notices that the performance specification of the project agreement is insufficient, ambiguous or incorrect, or that the performance cannot be carried out in the form described in the project

agreement or cannot be realised with the result described in the project agreement, he must inform m3 of this and the consequences apparent to him in writing without delay.

4.2 Dates/deadlines

As soon as it becomes apparent to the contractor that he will not be able to meet the agreed deadlines or execution periods, he shall inform m3 of this in writing without delay.

5 Data backup and documentation obligations

The contractor shall ensure that data is backed up on an ongoing basis in accordance with the current state of science and technology. He is obliged to back up the status of the project he has completed at least every working day and/or to ensure that m3 or the end customer complete backups accordingly.

6 Cooperation

6.1 Information

m3 shall provide the contractor with the information and documents available to m3 that the contractor requires to implement the project agreement.

6.2 Other cooperation

Further obligations to cooperate (*Mitwirkungsobliegenheiten*) on the part of m3 must be stipulated separately in the project agreement and expressly stated as obligations to cooperate on the part of m3. The obligations of m3 to cooperate are described conclusively in the project agreement and these General Terms and Conditions.

6.3 Cooperation of the end customer; request

Insofar as the respective circumstances require that m3's obligations to cooperate are to be provided by the end customer, m3 will work towards the provision of the agreed obligations to cooperate by the end customer.

If and insofar as the respective obligation to cooperate is not described in the project agreement and these General Terms and Conditions in terms of its type, scope, or time of performance in a precise manner that enables m3 to perform it without further consultation, it is the responsibility of the contractor to request and organise the cooperation of m3 in good time.

6.4 Cooperation not in accordance with the agreement

The contractor shall immediately notify m3 in writing if m3 does not, not timely or not as agreed fulfil an obligation to cooperate, and if, in the contractor's opinion, this may have an impact on the provision of the services owed under the project agreement. The contractor shall grant m3 a reasonable period to fulfil the obligations to cooperate. The notice to m3 must describe in detail the obligations to cooperate to be fulfilled – in particular with regard to the type and scope of content and technical aspects; otherwise, the notice shall be deemed not to have been given.

The contractor shall do everything that can reasonably be expected to fulfil his contractual performance obligations irrespective of the fact that m3's has not, not timely, or not as agreed provided its cooperation obligations. In particular, the contractor shall offer to support m3 in the performance of cooperation obligations. If this leads to additional costs for the contractor, the contractor shall provide written notice of this

to m3 in advance. The contractor shall not be entitled to claim additional costs without a corresponding written confirmation or commissioning by m3.

6.5 Legal consequence

If m3 does not, not timely or not as agreed fulfil its obligations to cooperate, and if the contractor has fulfilled its obligations towards m3 in accordance with clause 6.4, the deadlines dependent on the fulfilment of the obligations to cooperate shall be postponed by the duration of the non-fulfilment of the obligation to cooperate. The contractor can only invoke insufficient cooperation on the part of m3 after the complete fulfilment of its obligations in accordance with clause 6.4.

7 Dates and deadlines

7.1 Determination

The deadlines agreed in a project agreement are binding unless they are expressly marked as non-binding. The parties may agree further binding deadlines and time schedules for the provision of services even after conclusion of the project agreement, at least in text form. If these deadlines (including individual deadlines) are exceeded, the statutory consequences of default shall apply. In addition, clause 7.2 shall apply.

Insofar as the contractor works on a project for an end customer or a definable part thereof, m3 shall be entitled to pass on to the contractor a deadline set by the end customer for the performance of the service.

7.2 Non-compliance / contractual penalty

If a deadline is not met for reasons for which the contractor is responsible, the contractor shall pay a contractual penalty of 0.1% of the agreed fixed price for each working day of delay up to a maximum cumulative amount of 5% of the agreed fixed price. In the event of a remuneration agreement on an hourly basis, the contractual penalty shall amount to a lump sum of 8 times the hourly rate for each working day of delay, up to a maximum of 20 working days.

Further rights of m3 remain unaffected. If m3 asserts claims for damages, the contractual penalty will be offset.

8 Remuneration

8.1 Agreement

The contractor's remuneration shall be determined in the project agreement. Unless otherwise stipulated in the project agreement, the following shall apply:

8.2 Value added tax

The remuneration shall be understood to be exclusive of the statutory value added tax in each case.

8.3 Fixed price

a. Due date

If a fixed price has been agreed in the project agreement, the remuneration shall be due for payment upon acceptance or, if acceptance is not possible due to the nature of the work or the subject matter of the contract, upon completion of the subject matter of the contract and invoicing. If the services owed by the contractor do not constitute a work (within the meaning of sec. 631 German Civil Code – *BGB*), acceptance or completion shall be replaced by complete performance. If, in the case of larger projects, fixed prices are agreed for certain partial performances in the project agreement, the above shall apply accordingly with regard to these partial performances.

b. Security deposit

m3 shall be entitled to make a security deposit of 5% (five out of one hundred) from the total amount due until the expiry of the warranty period for any warranty claims, insofar as the subject matter of the contract is a work (within the meaning of sec. 631 BGB).

c. Additional costs

The contractor can only request an increase in the fixed price due to necessary additional work if the additional work has been approved by m3 in writing in advance. Without the corresponding approval of the additional work, m3 is not obliged to pay remuneration exceeding the originally agreed fixed price.

8.4 Time-based remuneration

a. Agreement

If remuneration by time (hours / day) is agreed in the project agreement, the amount of the hourly / daily rate shall be specified in the project agreement.

b. Invoicing

The contractor shall invoice the time spent in the past calendar month in the following calendar month. The contractor shall attach a summary showing the number of hours actually worked in the past calendar month as well as performance records in accordance with the following clause for each individual day to its invoice.

c. Performance records

The obligation to pay the time-based remuneration shall only exist against prior provision of corresponding performance records. The performance records must contain details of the respective service provider at the contractor incl. his function, at least a keyword description of the services provided, the date of the service provision and the actual working time performed.

d. Suspension / interruption of the project

The contractor shall neither be entitled to claim a continuous service provision in the period specified in the corresponding project agreement nor a claim to achieving the corresponding number of hours. Should the project work be suspended or interrupted in the meantime for reasons for which m3 is not responsible, m3 shall be entitled to release the contractor from the provision of services for this period. The contractor shall only be entitled to remuneration for services actually performed.

e. Payment on account

In the case of a work (within the meaning of sec. 631 BGB), the payments made shall be deemed to be payments on account (*Abschlagszahlungen*) until acceptance or completion.

8.5 Travel costs, expenses, travel times

Travel costs, expenses and travel times will only be reimbursed if agreed in the project agreement.

8.6 Check, due date

m3 shall check the invoices and, if m3 accepts them, pay them within 30 days of receipt of the invoice. In the event that this payment deadline is exceeded, the default interest rate shall be 5%.

9 Changes and additions to the scope of services

9.1 Agreement

Agreements that result in changes to the content, financial or time-related aspects of the service owed must be made in writing.

9.2 Change request

m3 can demand changes (extensions / reductions) to the service owed until the service has been provided in full by the contractor. This does not apply if this is unreasonable for the contractor, which the contractor shall prove. If significant contractual agreements, in particular remuneration and deadlines, are affected by a change request, the contractor shall inform m3 of this within 5 working days in the form of a written supplementary offer.

As long as no acceptance of a supplementary offer, if any, is made, the contractor shall perform in accordance with the original conditions.

10 Rights of use, ownership

10.1 Grant of rights

The contractor shall, at the time of creation, grant m3 the exclusive, transferable, and sub-licensable right of use and exploitation, unlimited in terms of space, time, and content, to all programmes, software, configurations and other work and development results created by him under a project agreement, as well as the associated documents and documentation (hereinafter collectively referred to as "work results"). The right of exploitation includes in particular the right to reproduce, distribute, make publicly available, modify, process and redesign the work results. This granting of rights is compensated with the agreed remuneration.

10.2 Scope

m3's rights to the work results and their exclusivity extend to all design materials and working documents relating to the work results, as well as to the object and source code, the latter in written and electronic form.

10.3 Copyright

Unless otherwise agreed, the contractor waives the assertion of moral rights to which it is entitled, in particular the right of publication (sec. 12 German Act on Copyright and Related Rights – *UrhG*), recognition of authorship (sec. 13 2nd sentence UrhG) and access to copies of works (sec. 25 UrhG).

10.4 Ownership

The contractor shall transfer to m3 the ownership of all documents, documentation and other objects belonging to the services to be provided by him directly at the time of their creation or production and in their respective processing state. m3 hereby accepts this transfer of ownership.

11 Acceptance

If the services to be provided by the contractor under a project agreement are a work ((within the meaning of sec. 631 BGB), the parties agree as follows:

11.1 Overall acceptance

Unless otherwise agreed in the project agreement, the acceptance shall take place through an overall acceptance. Partial acceptances are excluded. Technical approvals and other formal approvals of partial services only include the declaration that the provision of services may be continued based on the approved partial services.

11.2 Handover for acceptance

After completion of the service to be provided by the contractor under the respective project agreement, including any associated documents, documentation and the demonstration of the work result, the contractor shall hand over the respective work results, including associated documents and documentation, to m3 or to a third party designated by m3, which may particularly be the end customer, in a form ready for acceptance.

11.3 Acceptance test / -declaration

Upon handover, m3 or the third party designated by m3 shall check the work results for their acceptability and conformity with the contract and shall declare acceptance if the work results are free of defects apart from insignificant defects. An insignificant defect only exists if the use of the work results is possible without or with only insignificant restrictions.

11.4 Defects, supplementary performance

m3 or the third party designated by m3 will give notice of any defects that occur and set the contractor an appropriate deadline for the rectification of the defects. As soon as the contractor has rectified the defects, he shall make the work results available for acceptance again and notify m3 of this. m3 shall then carry out the acceptance test again in accordance with clause 11.3.

12 Provisions for defaults and breaches of duty

12.1 Liability for material and legal defects

The contractor shall assume liability for material and legal defects according to statutory law.

12.2 Virus-free

The contractor furthermore warrants that the service to be provided is free of viruses and other harmful routines, programmes and/or components at the time the risk passes to m3.

12.3 Safety functions

If the contractor's performance consists of the creation or adaptation of software, the contractor warrants that the software does not contain any functionality that enables a weakening, circumventing, or disabling of security functions.

In particular, the contractor assures that no unauthorised third party will be given access to systems or data of m3 or the end customer with the help of the software or bypassing existing security devices without prior written consent.

12.4 Third party rights

The contractor guarantees that the services provided by him are free of third-party rights that exclude or impair their use by m3 or the end customer, or that he has the right to transfer such rights to m3 and the end customer.

The contractor shall indemnify m3 for an unlimited amount against all claims by third parties that are asserted against m3 due to the use of the work results provided by the contractor. This indemnity claim also

includes all costs in connection with any legal disputes. If infringements of the rights of third parties are asserted and the rights to which m3 is entitled are impaired or prohibited, the contractor shall be obliged, at his discretion, to either

- modify the services provided by him in such a way that they no longer infringe the rights of third parties, but nevertheless comply with the contractual provisions; or

- obtain the rights to use the services provided by him without restriction and without additional costs for m3 in accordance with the contract.

If the contractor fails to ensure the contractual use of the services as described above, m3 can claim damages according to statutory law and withdraw from the project agreement or terminate it without notice for good cause.

12.5 Lack of expert knowledge

It shall also be regarded as a material breach of duty if the contractor does not have the expert knowledge required to carry out the project agreement. If the contractor lacks this knowledge, m3 shall have to right to withdraw from the project agreement or to terminate it for good cause without notice.

13 Term / termination of the project agreement

13.1 Term, termination

The term of the project agreement starts upon signature and runs for the time specified in the project agreement or until the agreed services have been fulfilled. m3 can terminate the project agreement with five calendar days' notice.

13.2 Extraordinary termination

The right to extraordinary termination for good cause remains unaffected. Good cause for extraordinary termination shall particularly exist if

a. the contractor – despite warning – does not provide his services in the agreed or industry-standard quality and continuing with the project agreement becomes unreasonable for m3 as a result,

b. the contractor fails to fulfil material obligations arising from these General Terms and Conditions, in particular from clauses 10, 14, 15 and 17 of these General Terms and Conditions and continuing with the project agreement becomes unreasonable for m3 as a result,

c. insolvency proceedings are opened against the assets of the contractor, or the opening is rejected for lack of assets, or

d. the contractual relationship between m3 and the end customer ceases for whatever reason, or the end customer rejects the contractor for whatever reason. The contractor therefore expressly acknowledges that no legal claims arise from such a termination. In this case, m3 shall inform the contractor immediately of the discontinuation of the contractual relationship. Any other contractual claims of the contractor, e.g., outstanding remuneration claims, remain unaffected by this.

13.3 Remuneration

If remuneration according to a fixed price has been agreed in the project agreement, m3 shall, if the project agreement is terminated, pay remuneration on a pro rata basis for the services rendered; if remuneration according to time and effort is agreed, m3 shall pay remuneration on a pro rata basis for the time and effort so far incurred by the contractor.

14 Confidentiality / secrecy

14.1 Purpose of use

The contractor shall use all information, documents, records, programmes, electronic data and files and other tools related to his work only for the performance of the respective project agreement.

14.2 Confidentiality

The contractor shall maintain strict confidentiality vis-à-vis third parties regarding all Confidential Information of m3, its affiliated companies and of the respective end customer that has been entrusted to him, made accessible to him, or otherwise become known to him. This shall also apply if the project agreement is not concluded and for a period of ten years after termination of the project agreement.

The term Confidential Information ("Confidential Information") particularly includes information about files, know-how, software, interfaces, business and market strategies, trade and business secrets, internal company and / or business matters, information about pricing, margins and sales, customer data, marketing plans, cooperation partners, other financial and business data as well as the terms of the respective project agreement. If a Confidential Information does not meet the requirements of a business secret within the meaning of sec. 2 No. 1 of the German Act on the Protection of Trade Secrets (GeschGehG), such information shall nevertheless be subject to the confidentiality obligation pursuant to this clause 14.2.

The contractor shall not use the Confidential Information about the respective project that has become known to him directly or indirectly through m3 in connection with a project agreement or in any other way, and in particular shall not make it accessible to third parties. Contractor undertakes not to observe, examine, reverse engineer, decompile or test Confidential Information according to sec. 3 (1) No.2 of the German Act on the Protection of Trade Secrets (GeschGehG), that have not previously been made publicly available by m3.

Third parties also include employees of m3 or one of its affiliated companies who are not directly involved in the respective project.

14.3 Unauthorised third parties

The contractor shall adequately secure the services to be provided against unauthorised use, duplication, and transfer.

Furthermore, the contractor shall diligently ensure that m3 programmes or other work results do not reach unauthorised third parties.

14.4 Disclosure

The contractor is not entitled to disclose these General Terms and Conditions and existing project agreements between him and m3 to third parties, in particular to the end customers and other principals of m3, without the prior express consent of m3. The contractor shall also maintain confidentiality in this regard.

14.5 Exceptions

Notwithstanding the foregoing, the contractor may disclose Confidential Information if (i) it was already known to the contractor at the time of disclosure without any obligation of confidentiality, (ii) the information has already been published or will be published subsequently without the contractor breaching the contract or applicable law, (iii) the contractor lawfully receives the information from a third party without an obligation to maintain confidentiality, (iv) the information has been independently developed by the contractor, or (v) statutory provisions or orders of government bodies require disclosure or m3 has consented thereto. The contractor shall inform m3 without delay – insofar as this is legally permissible – as soon as the contractor is requested by a public authority to provide information about m3's Confidential Information or is subjected to other official measures.

14.6 Involvement of third parties

The contractor shall impose the same confidentiality obligations on its employees and any contractors engaged by him.

14.7 Violation

In the event of a violation of this confidentiality and non-disclosure obligation, m3 shall be entitled to a contractual penalty of up to € 10,000.00 per violation, unless the contractor is not responsible for the breach. The amount of the contractual penalty depends on the severity and consequences of the breach. The exact amount of the contractual penalty shall be determined by m3 in each individual case at its reasonable discretion and, in the event of a dispute, shall be reviewed for its appropriateness by the competent court.

The assertion of further claims, including those arising from the GeschGehG, shall remain unaffected. The contractual penalty shall be offset against any obligation to pay damages.

15 Data protection

15.1 Data processing

If the contractor is a company, he shall ensure through appropriate agreements with its employees or other agents that their personal data may be processed and used insofar as they are relevant to the cooperation with m3 and necessary for its proper performance.

15.2 Personal data

Insofar as the contractor has to process personal data in connection with the implementation of a project agreement, he shall be obliged to maintain confidentiality and to comply with the data protection requirements of the applicable data protection laws, including the EU General Data Protection Regulation (GDPR). If the contractor is a company, it shall commit its employees or other agents to confidentiality and compliance with the data protection requirements under the Data Protection Regulation, among others. The contractor shall provide m3 with proof of this on request.

According to Art. 4 No. 1 of the GDPR, personal data is any information relating to an identified or identifiable natural person. Personal data may not be processed for any purpose other than the respective performance of services. The same also applies to the personal data of m3's end customers and principals.

The obligation to comply with data secrecy and the requirements of data protection law, including the GDPR, shall continue to exist even after termination of the cooperation. The obligation also extends to personal data that is disclosed, made accessible or otherwise disclosed to the contractor after the expiry of a project agreement.

15.3 Involvement of third parties

The contractor shall impose the same obligations on its employees and any subcontractors it may rightfully engaged.

15.4 Commissioned data processing and data transfer

If the contractor collects, processes, or uses personal data on behalf of m3 or its end customers at any time, it shall conclude a separate data processing agreement according to Art. 28 GDPR with m3 in accordance with m3's specifications. Any transfer of data outside the European Union requires the prior written consent of m3; if the data is subject to banking secrecy, the written consent of m3 is required for any cross-border transfer of data.

15.5 Compliance

The contractor shall enable m3 to obtain information on compliance with data protection laws at any time.

16 Access to IT systems and applications of m3 or its end customers, information security

16.1 Work equipment; access authorizations to IT systems and applications

The contractor shall, as far as possible, use its own work equipment (including IT systems and applications) in the provision of its services.
If access by the contractor and / or his vicarious agents (*Erfüllungsgehilfen*) to the IT systems or applications of m3 or its end customers is strictly necessary for the provision of the contractual services, the contractor shall inform m3 of this in good time, naming the persons used. The contractor shall not access the IT systems and applications of m3 or its end customers without the prior written consent of m3. The contractor shall inform m3 immediately if persons named in accordance with sentence 1 are no longer used to provide the contractual services or if access to the IT systems or applications of m3 or its end customers is no longer necessary for the provision of the contractual services. The contractor must ensure that the access authorizations (user IDs and passwords) granted to the persons used are kept secret, only used for the intended purpose, not passed on to unauthorized third parties or made accessible in any other way and secured against access by unauthorized parties. Any suspicion of unauthorized or improper use of the access authorizations by the persons used or unauthorized third parties must be reported to m3 immediately.

16.2 Use of and access to IT systems and applications of m3 or its end customers as well as connection of own work equipment with these systems and applications

When using and accessing IT systems and applications of m3 or its end customers and when connecting its own work equipment to these systems and applications, the contractor shall accept and comply with the relevant usage and security policies in the latest versions. The usage and security policies shall be made available to the contractor on request.

16.3 Protection against unauthorised access

The contractor shall ensure that documents and files on data carriers are protected against unauthorized access in accordance with the current state of science and technology. This particularly includes the locking of own offices against unauthorized access, the protection of computers against unauthorized access by means of secure passwords and the encryption of data carriers.

16.4 Prohibition of external data transfer

If the contractual service includes the creation or provision of software, the software provided to m3 may not automatically and / or involuntarily transfer data, in particular registration information or configuration data of m3 and its end customers or their respective systems, to the contractor or other third parties (hereinafter: "external data transfer") without prior express written consent. If the contractor becomes aware of an external data transfer, he must inform m3 of this before concluding the project agreement.

16.5 Protection against computer viruses and other dangerous programmes

The contractor shall check the software, systems, databases and interfaces as well as data carriers handed over by him for viruses, worms, Trojans and other computer malware contained therein with a virus detection programme in the respective latest state of science and technology.

16.6 Use of open-source software

If open-source software is used in connection with the provision of the contractual services, in particular if open-source components such as libraries are integrated into software when it is created, the contractor undertakes to inform m3 in writing by means of a separate, explicit notification a reasonable time before the use of open-source software, to specify the open-source software and to provide the licence conditions applicable to the open-source software in each case. m3 has the right to object to the use of open-source software. The use of open-source software that is subject to a so-called copyleft licence is not permitted. The contractor shall ensure that

- all licence obligations applicable to the open-source software have been fulfilled in full by the contractor and do not prevent m3 from using the work results in accordance with the contract; and

- the contractor has provided m3 with all necessary licence conditions and all necessary source codes and scripts.

In the event of a breach of the foregoing warranty by the contractor, clause 12.4 shall apply accordingly.

16.7 Liability

The contractor shall be liable for all damage caused by a culpable breach of a provision of this clause 16 in accordance with the statutory provisions.

17 Non-Competition

17.1 Activity of the contractor for the end customer

During the term of the project agreement, the contractor shall not, directly, or indirectly, work on the contractual project for the end customer ("Non-Competition Clause"). If the contractual project has not yet been completed at the time of termination of the project agreement, the Non-Competition Clause in relation to the contractual project shall continue to apply for a period of 12 months after the end of the project agreement.

Apart from that, the contractor is free to act for other third parties.

17.2 Violation

In the event of a breach of this Non-Competition Clause, m3 shall be entitled to a contractual penalty of up to € 25,000.00 per violation, unless the contractor is not responsible for the breach. The amount of the contractual penalty depends on the severity and consequences of the violation. The exact amount of the contractual penalty shall be determined by m3 in each individual case at its reasonable discretion and, in the event of a dispute, shall be reviewed for its appropriateness by the competent court.

The right to claim damages exceeding the contractual penalty remains unaffected. The contractual penalty shall be offset against any obligation to pay damages.

18 Organization of cooperation

18.1 The contractor shall perform the contractual services in accordance with the principles of proper professional practice completely, as agreed and on time within the framework of its own organization and under its own responsibility. As a matter of principle, the contractor shall provide the services with its own equipment. Each of the parties shall be solely responsible for the organization of its operations and processes and shall be free to determine the time, manner and place of its own deployment or the deployment of its employees and other vicarious agents, unless mandatory restrictions arise from the service description and the nature of the matter. The contractor shall always make it clear that he is an independent contractor commissioned by m3.

18.2 The services shall be performed by the contractor or by its dependent employees. If the contractor wishes to transfer the services to appropriately qualified third parties, clause 3.6 of the General Terms and Conditions shall apply. The third party shall be named to m3. The contractor shall demonstrate the competence and reliability of the third party to m3 upon first request.

18.3 If the contractor is a natural person, the agreed remuneration amount in the respective project agreement between m3 and the contractor is based on the fact that the contractor is self-employed and that he makes provisions at his own expense for old age, incapacity to work or occupational disability, illness, need for care and unemployment. The contractor shall also bear the taxes incurred on the remuneration.

18.4 At m3's request, the contractor must prove that he also has other clients to a relevant extent and that his self-employment is recognized by the authorities (e.g., by submitting a current certificate from the social insurance agency). If he does not comply with this obligation, he must compensate m3 for the resulting damages. m3 reserves the right to independently verify the contractor's self-employment, in particular by means of an application procedure for status clarification in accordance with sec. 7a German Social Security Code IV (SGB IV).

18.5 The contractor shall indemnify m3 internally upon first request from all costs in connection with the contractor's activities, insofar as the contractor, an employee deployed by him or a subcontractor or an employee deployed by him effectively claims the existence of an employment relationship with m3 or an authority qualifies this person as a dependent employee of m3. The indemnity particularly includes the costs of any subsequent social security contributions (employee and employer contributions), all wage or income tax, church tax and solidarity surcharge payments as well as interest assessed or imposed in this connection, wage and salary payments and holiday pay. However, the indemnification does not cover any late payment surcharges, fines or penalties determined or imposed on m3, for which m3 may be solely responsible.

18.6 m3 is entitled to offset its claim for reimbursement against any remuneration claims of the contractor – subject to applicable seizure limits – or to make a set-off in this respect.

18.7 In such a case, the parties shall agree on the termination or amendment of the agreement for further cooperation. In particular, the parties agree that, in such a case, the contractor's remuneration for the period following the determination of the contractor's lack of independence shall be reduced to such an extent that m3 does not incur any additional financial burdens as a result of the lack of independence.

19   Obligation to pay the minimum wage, exemption of m3, right of termination of m3

19.1 Against the background of sec. 13 German Act Regulating a General Minimum Wage (MiLoG) in conjunction with sec. 14 German Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (AEntG), the contractor warrants that he and third parties commissioned by him as well as third parties commissioned by these third parties will pay the applicable statutory minimum wage and will also comply with the other provisions of the MiLoG, such as, in particular, recording obligations.

19.2 The contractor further assures that he will indemnify m3 from any liability insofar as m3 is held liable for payment of the respective applicable statutory minimum wage and related costs.

19.3 In the event of the contractor and / or the abovementioned third parties and further agents breaching the provisions of the MiLoG and / or in the event of the contractor breaching the above-mentioned obligations, m3 shall be entitled to terminate the project agreement by giving 5 calendar days' notice.

20   Final provisions

20.1 Written form

Amendments and supplements to the project agreements and these General Terms and Conditions must be made in writing to be effective. This shall also apply to any amendment of this written form clause.

20.2 Place of performance

Unless otherwise agreed in the respective project agreement, the place of performance shall be m3's registered office.

20.3 Offsetting

The contractor shall only be permitted to offset undisputed or legally established claims.

20.4 Applicable law, place of jurisdiction

The law of the Federal Republic of Germany shall apply to all relations of the parties out of or in connection with a project agreement. The application of the provisions of the UN Convention on Contracts for the International Sale of Goods and other conflict of law provisions is excluded.

The place of jurisdiction shall be Munich.

20.5 Severability clause

If contractual provisions including these General Terms and Conditions do not or not fully become part of the contract or are void, ineffective or unenforceable, the validity of the remaining provisions shall remain unaffected.

Insofar as provisions of these General Terms and Conditions do not become part of the contract or are void or ineffective, the content of the project agreement shall primarily be governed by the statutory provisions (sec. 306 (2) BGB). If, however, no suitable statutory provisions exist for this purpose, the parties shall agree – subject to the possibility and priority of a supplementary interpretation of the contract – on effective provisions which both economically and materially come as close as possible to the provisions which did not become part of the contract, are void or ineffective. The legal consequence of sentence 2 shall apply mutatis mutandis to contractual provisions that prove to be unenforceable.

If the project agreement, including these General Terms and Conditions, proves to be incomplete for reasons other than those mentioned in paragraph (1) (in particular due to missing provisions, e.g., because relevant points were overlooked), the Parties shall insofar – subject to the possibility and priority of a supplementary interpretation of the contract – agree on effective provisions which come as close as possible to the economic objectives of the project agreement.

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