

# Terms and Conditions of Simon-Kucher Engine GmbH for SaaS and Customization

Version: November 17, 2023

These *Terms and Conditions of Simon-Kucher Engine GmbH for SaaS and Customization* (the "**SaaS T&Cs**") apply to all agreements between Simon-Kucher Engine GmbH, Willy-Brandt-Allee 13, 53113 Bonn, Germany ("**SKE**") and its customers (each a "**Customer**") regarding the provision of software functions as Software-as-a-Service (SaaS) and related customization services commissioned by the Customer, if any (such an agreement hereinafter "**Customer Agreement**"). SKE and the Customer are hereinafter individually also referred to as "**Party**" and jointly as "**Parties**".

## 1. Subject Matter, Order of Precedence

- 1.1 The subject matter of these SaaS T&Cs is the provision of the software functions described in more detail in the Customer Agreement (the "**SaaS Service**") for access and use by the Customer via the internet, and the payment of the agreed fees by the Customer.
- 1.2 The provisions of the SaaS T&Cs also apply to customization services commissioned by the Customer (cf. section 3) as well as to changes to the SaaS Service SKE may make during the term of the Customer Agreement and which are made available to the Customer as part of the SaaS Service, for example by installing patches, updates or upgrades (collectively "**Updates**").
- 1.3 The delivery of software for installation on the Customer's own systems (on-premise) or on systems operated by third parties on behalf of the Customer does not form part of the subject matter of these SaaS T&Cs. Unless expressly agreed otherwise in the Customer Agreement, the Customer shall not be entitled to the delivery of object code or source code; this also applies in case of customization services (cf. section 3.1).
- 1.4 Unless expressly agreed otherwise, all other contractual agreements that form part of the Customer Agreement, particularly service-specific agreements, shall take precedence over the provisions of the SaaS T&Cs.
- 1.5 The Customer's terms and conditions shall not apply to the Customer Agreement, not even in a supplementary manner, except where SKE expressly agrees to the Customer's terms and conditions in text form or written form.

## 2. General Provisions for the Provision of Services

- 2.1 Details of the SaaS Service and any additional services to be provided by SKE, if any, (collectively the "**Contractual Services**") as well as the remuneration to be paid by the Customer in consideration of the Contractual Services are set out in the Customer Agreement.
- 2.2 SKE shall provide the Contractual Services in the agreed quality. Specified delivery and performance times and dates are non-binding, unless expressly agreed to be binding. Such performance times and dates shall automatically be extended or postponed by the period of time for which SKE is prevented from performing the relevant Contractual Services, plus a reasonable ramp-up time after the reason for the hindrance has ceased to exist; this shall not apply to the extent that SKE itself is responsible (*Vertretenmüssen*) for the hindrance.
- 2.3 SKE may use subcontractors as vicarious agents (*Erfüllungsgehilfen*) to perform the Contractual Services. SKE shall be liable for the acts and omissions of any vicarious agents as if they were acts or omissions of SKE.
- 2.4 SKE will notify the Customer appropriately about disruptions, impairments, obstacles, and other restrictions, insofar as these have an impact on the contractual provision of the Contractual Services. If SKE recognizes that binding delivery or performance dates cannot be met, SKE will notify the Customer accordingly.
- 2.5 Unless expressly agreed otherwise, the place of performance for the Contractual Services shall be the registered office(s) of SKE from which the respective Contractual Services are being rendered.

## 3. Customization of the SaaS Service

- 3.1 The SaaS Service is a standardized product and/or contains standardized components of SKE. Development, configuration and customization services (collectively "**Customization Services**") are only performed by SKE if and to the extent that such services are expressly agreed in the Customer Agreement. In any instance, Customization Services are performed in accordance with SKE's standards (technologies, methods). SKE shall make the results of Customization Services available to the Customer as part of the SaaS Service for use via the internet in accordance with these SaaS T&Cs.
- 3.2 If Customization Services are commissioned and performed as a work contract (*werkvertraglich*), the results of the Customization Services are subject to the Customer's acceptance. For the purpose of the respective acceptance test, SKE shall make the results of the Customization Services available to the Customer as part of the SaaS Service for access via the internet. The Customer shall commence the acceptance testing immediately and perform the acceptance procedure expeditiously. The Customer is obliged to accept the results in accordance with Section 640 para. 1 German Civil Code (*BGB*).
- 3.3 The Customer may declare acceptance expressly or by conclusive action. In particular, the Customization Services shall also be deemed to have been accepted by the Customer if the Customer
  - a) uses the SaaS Service in operational mode or with real data for a period of at least five (5) business days without expressly refusing acceptance due to not insignificant defects; or

- b) does not declare the refusal of acceptance within a reasonable period of time after the provision of the Customization Services. As a general rule, such reasonable period shall not exceed two (2) weeks.

Section 640 para. 2 and 3 BGB shall remain unaffected.

- 3.4 If the Customer refuses acceptance of the Customization Services, he/she shall also notify SKE in writing or by electronic means of the material defects on account of which the Customer refuses acceptance. If the Customer refuses acceptance even though the results are ready for acceptance (*abnahmereif*), the Customer shall be in default of acceptance (*Annahmeverzug*). The Customer's obligation to pay the ongoing fees for operation and provision of the SaaS Service shall remain unaffected.

#### **4. Operation and Provision of the SaaS Service**

- 4.1 The SaaS Service shall be operated by SKE during the "**Operating Times**" specified in the SLA (cf. section 6) on servers set up for this purpose, and shall be made available to the Customer for access and use via the internet during the Operating Times in accordance with the availability agreed in the SLA. The SaaS Service shall be operated by SKE in accordance with the recognized state of the art (*anerkannter Stand der Technik*) and the SLA (cf. section 6.1).
- 4.2 SKE shall grant the Customer access to the SaaS Service by either providing the Customer with user name and password (collectively "**Access Data**") or by enabling the Customer to set up Access Data themselves. Unless otherwise agreed, access to the SaaS Service is established via a common internet browser.
- 4.3 The Customer shall set up Access Data only for persons authorized by the Customer to use the SaaS Service (collectively, "**Authorized Users**") and shall disclose Access Data only to such Authorized Users. The Customer shall adequately protect the Access Data against unauthorized access. Any use of Access Data and the SaaS Service, including use in breach of the Customer Agreement or any other unauthorized use, shall be deemed by the Parties to be a use on behalf of the Customer, unless the Customer is not responsible for the unauthorized use (*kein Vertretenmüssen*).
- 4.4 The Access Data and the associated accounts are individually bound to the respective Authorized User and are not transferable. However, the Customer may at any time permanently revoke the authorization of an Authorized User to use the SaaS Service and grant authorization to another person instead, who shall thereby take the place of such Authorized User.
- 4.5 If the Customer becomes aware of unauthorized access to Access Data or the SaaS Service, the Customer shall immediately notify SKE in writing (email being sufficient) and change or have changed the Access Data concerned.
- 4.6 If SKE has factual reasons to suspect that Access Data is being misused or used in breach of the Customer Agreement, SKE may block and replace such Access Data. In doing so, SKE shall give due consideration to the legitimate interests of the Customer. Any rights of retention to which SKE may be entitled in such a case shall remain unaffected.

#### **5. Quality of the SaaS Service**

- 5.1 The SaaS Service provides the functions as described in the Customer Agreement. The Customer is aware and agrees that the contractual use of the SaaS Service requires the Customer to fulfil the minimum requirements (cf. section 7.2a) and to have a sufficiently dimensioned internet connection.
- 5.2 SKE may update the SaaS Service during hours of service and make other reasonable changes to the SaaS Service, in particular to adapt to a changed legal situation, technical developments or to improve IT security, without requiring the Customer's separate consent. In doing so, SKE shall reasonably take into account the Customer's legitimate interests.

#### **6. Service Level (Availability, Support, Backups)**

- 6.1 SKE warrants the availability of the SaaS Service in accordance with the Service Level Agreement ("**SLA**"), which is incorporated into the Customer Agreement.
- 6.2 SKE shall support the Customer's use of the SaaS Service by providing the support services described in the SLA.
- 6.3 SKE shall create backups in accordance with the periodicity agreed upon in the SLA, and shall retain any such backups for the period stipulated in the SLA.
- 6.4 The obligations regarding the contractually owed availability of the SaaS Service, the subject matter and the scope of the support services, and the periodicity and retention periods of backups depend on the specific Service Level (*Basic/Standard/Extended*) selected by the Customer. If the Customer Agreement does not expressly provide otherwise, the "Basic" Service Level shall apply.

#### **7. Customer's Cooperation Obligations and Responsibilities**

- 7.1 General cooperation obligations and Customer responsibilities
- a) The Customer shall provide SKE with all documents, data and other information from the Customer's sphere requested by SKE for the performance of the Contractual Services free of charge, completely and

without undue delay. The Customer shall ensure that SKE's queries are answered in a professional and qualified manner, within a reasonable period of time. SKE may assume that all information provided by the Customer is complete and correct, unless SKE recognizes, or must recognize with the diligence of a prudent businessman, that the information is incomplete or incorrect.

- b) The Customer shall establish all necessary conditions in his/her sphere for the proper performance of the Contractual Services. In particular, the Customer shall provide SKE with the necessary access to its IT systems and, if possible, also enable remote access to the Customer's system. If remote access is not possible for security or other reasons, the relevant deadlines shall be extended accordingly.
- c) Insofar as it is agreed that Contractual Services are to be performed on site at the Customer's premises, the Customer shall provide SKE with sufficient work places and work equipment free of charge.
- d) The Customer shall adequately test the SaaS Service and all work results made available to the Customer within the scope of the Contractual Services, including the results of Customization Services, for usability and suitability for the Customer and the Customer's purposes prior to their operational use, and shall commence such operational use only if the test results are positive. The foregoing shall not affect the Customer's statutory and contractual obligations to inspect and give notice of defects (*Rügeobliegenheiten*).
- e) If the Customer claims a defect in the Contractual Services although there is actually no defect, the Customer shall reimburse SKE for all expenses and costs incurred, unless it was not apparent to the Customer in the exercise of due diligence that the claimed defect was not actually present.
- f) The Customer shall nominate a primary contact person for SKE and an alternate contact person (collectively, "**Contact Persons**") for the performance of the Customer Agreement. The Contact Persons' contact information shall include the name, telephone number and e-mail address. The Contact Persons shall be authorized to make legally binding decisions for the Customer and to effect such decisions in a timely manner.
- g) The Customer is obliged to inform SKE immediately, at least in text form, about changes in the company name, company address, Contact Persons and any other changes relevant to the performance of the Customer Agreement.
- h) The Customer shall also provide any further cooperation agreed in the Customer Agreement. The Customer shall provide all cooperation services exclusively through competent personnel who are sufficiently qualified for the respective cooperation service.

#### 7.2 SaaS-specific cooperation services and responsibilities of the Customer

- a) The Customer shall be solely responsible for meeting the minimum technical requirements communicated by SKE for the use of the SaaS Service, such as with regard to internet browser and operating system (the "**Minimum Requirements**"), as well as for the operability and sufficient bandwidth of his/her internet connection to access and use the SaaS Service.
- b) The Customer shall be responsible for the proper provision of Customer Content (cf. section 13.1) to the SaaS Service via connected APIs. The Customer shall take reasonable measures to ensure that Customer Content is correct and complete and that it is properly provided technically.
- c) The Customer is responsible for the security of the Customer's systems and their protection against malware and attacks.
- d) The Customer shall use the SaaS Service only to the extent permitted by the Customer Agreement and shall comply with all legal and regulatory requirements applicable to the Customer and the Customer's use of the SaaS Service. Authorized Users must be bound by the Customer accordingly and shall be appropriately monitored by the Customer in this respect.
- e) If the Customer suspects or becomes aware of (i) an unauthorized use of the Customer's access to the SaaS Service; (ii) loss or theft of Access Data of the Customer; (iii) circumstances or incidents affecting the security of the SaaS Service or other Contractual Services; or (iv) governmental actions or court decisions relating to the Customer's use of the SaaS Service or hosted Customer software, the Customer shall immediately notify SKE at least in text form.
- f) If the Parties have agreed on usage restrictions for the use of the SaaS Service or the Customer software hosted by SKE (e.g. a maximum number of Authorized Users), the Customer shall ensure compliance with the agreed usage restrictions by taking appropriate measures to this end.

## 8. Remuneration, Payment Terms, Taxes

8.1 The Customer is obliged to pay the agreed remuneration for the Contractual Services in a timely manner. Unless expressly agreed otherwise, the following payment terms shall apply:

- a) If remuneration is agreed on a time and materials basis, e.g. for Customization Services, the Customer shall be obliged to pay the agreed hourly and daily rates according to the time and effort incurred. SKE will document the activities performed and expenses incurred. Travel time is considered working time.

Unless otherwise agreed, the work performed shall be invoiced on a monthly basis. Upon conclusion of the Customer Agreement, the Customer shall make an advanced payment of 25% of SKE's non-binding effort estimation as a creditable advance payment.

- b) For the provision of the SaaS Service, the Customer is obligated to pay the agreed recurring fee from the moment SKE provides the Customer with access to the SaaS Service. The Customer shall in each case be obliged to make an advanced payment for the following twelve (12) months. If the Parties instead agree on a monthly payment, SKE may charge a service fee in the amount of 20% of the portion attributable to each month, but not more than EUR 2,000.00 per month.
- 8.2 Unless otherwise agreed, the amounts invoiced by SKE shall be due for payment on the day of invoicing (invoice date). Due payments shall be paid by the Customer in Euros within fourteen (14) days of the due date, unless other payment terms have been agreed upon. The Customer shall always be the recipient of the invoice and the party liable to pay SKE.
- 8.3 Money owed shall be subject to interest during any period of default. The interest rate shall be nine (9) percentage points per annum above the current base rate published by the Deutsche Bundesbank.
- 8.4 All fees are subject to the addition of statutory value added tax and do not include the deduction of any withholding taxes or other deductions imposed by a tax authority or other governmental entity and/or owed pursuant to statutory provisions. The Customer shall remain obligated to pay the agreed remuneration in full even in the event that deduction or withholding taxes are incurred.

## 9. Permitted Use and Usage Restrictions

- 9.1 Between the Parties, all exclusive rights in and to the SaaS Service, Updates, as well as in and to Customization Services and their results shall remain entirely with SKE. The Customer is permitted to use the SaaS Service including Updates and the results of Customization Services in accordance with section 9.2. The Customer does not acquire any further rights to the SaaS Service, Updates, Customization Services or the underlying software.
- 9.2 During the term of the Customer Agreement the Customer is permitted to access the SaaS Service via the internet and to use the functions of the SaaS Service for the Customer's own internal business purposes. If the Parties have agreed on specific usage restrictions (such as a maximum number of Authorized Users), the Customer may use the SaaS Service only within the scope of these usage restrictions.
- 9.3 The Customer is not permitted to any use of the SaaS Service for any purpose other than as specified in section 9.2. In particular, the Customer is not authorized to
- a) reproduce, distribute or make publicly available the SaaS Service or parts thereof, except to the extent necessary for the Customer's use of the SaaS Service in accordance with the Customer Agreement;
  - b) access the SaaS Service in any way other than by using the Access Data;
  - c) grant unauthorized third parties access to the SaaS Service or tolerate such access;
  - d) copy, load, distribute or disclose any software used to provide or support the SaaS Service, in whole or in part, onto their own systems; and/or
  - e) take, encourage or tolerate any action that interferes with the SaaS Service or that temporarily or permanently impairs or prevents its use by other customers.

The Customer's mandatory statutory rights shall remain unaffected.

- 9.4 The Customer shall notify SKE immediately in text form or written form upon notice of a breach of this section 9.

## 10. Third Party Users

- 10.1 The Customer may grant access to the SaaS Service to third parties, including Affiliates (cf. section 14.3) of the Customer, and permit such third parties to use the SaaS Service in the manner described in section 9.2 only if SKE has expressly consented to the use of the SaaS Service by the third party (such third parties collectively "**Third Party Users**").
- 10.2 Prior to granting access, the Customer shall require each Third Party User in writing to comply with the restrictions on use pursuant to section 9.3 and to require each Third Party User to,
- a) meet the minimum requirements and maintain an internet connection with sufficient capacity;
  - b) use the SaaS Service only for the Third Party User's own data;
  - c) adequately protect Access Data against access by unauthorized third parties and require users authorized by the Third Party User to keep the Access Data confidential; and
  - d) immediately notify the Customer in text form or written form of any unauthorized access to Access Data or the SaaS Service.

- 10.3 The Customer is liable for the actions of Third Party Users as for his own actions. In particular, the Customer shall also be liable to SKE for the actions of a Third Party User which would constitute a breach of the Customer Agreement if the Customer had performed such actions himself/herself.
- 10.4 The Customer shall be responsible to SKE for content entered, uploaded or otherwise made available by or for Third Party Users in the same way as for the Customer's own content. All Claims and rights to which SKE is entitled with respect to Customer Content (cf. section 13) shall also accrue to SKE vis-à-vis the Customer with respect to such content of Third Party Users.

## 11. Material and Legal Defects

- 11.1 SKE warrants that the SaaS Service is provided in accordance with the Customer Agreement and is free from material defects and legal defects. The agreed availability of the SaaS Service is governed by section 6.
- 11.2 SKE shall remedy material defects and legal defects within a reasonable period of time after proper notification of the defect by the Customer. The defect may also be remedied by means of an Update.
- 11.3 Insofar as the Customer is wholly or partially deprived of the contractual use of the SaaS Service due to a legal defect of the SaaS Service, SKE may also remedy such defect, at its own discretion, by
- providing the Customer with the necessary rights to use the SaaS Service in accordance with the Customer Agreement; or
  - modifying the SaaS Service so that the third party's rights no longer prevent the Customer from using it in accordance with the Customer Agreement.

In doing so, SKE will give due consideration to legitimate interests of the Customer. If SKE fails to remedy a legal defect within a reasonable period of time despite reasonable efforts, either Party may terminate the Customer Agreement for cause.

- 11.4 Otherwise, in the event of defects in the SaaS Service, Sections 535 et seq. BGB shall apply with the proviso that the strict liability for defects existing at the time of conclusion of the contract pursuant to Section 536a para. 1, 1st alternative BGB shall be excluded.

## 12. Third Party Rights

- 12.1 If a third party asserts a claim of infringement against the Customer through the SaaS Service, the Customer shall immediately notify SKE in text form or written form.
- 12.2 SKE shall reasonably support the Customer in the defence against such third party claims and provide the Customer with the relevant information. SKE's obligation to remedy defects pursuant to section 11 shall remain unaffected.

## 13. Customer Content

- 13.1 The Customer is solely responsible for the completeness, accuracy and legality of any information entered, uploaded or otherwise stored by the Customer (collectively, "**Customer Content**") when using the SaaS Service.
- 13.2 By entering, uploading or otherwise providing Customer Content, the Customer grants SKE for the duration of the Customer Agreement a non-exclusive, irrevocable, worldwide right to use the Customer Content to perform the Customer Agreement, in particular to reproduce, process and display the Customer Content as part of the SaaS Service. SKE may have this right exercised by third parties on its behalf, e.g. by hosting providers used by SKE. The Customer warrants that he/she holds all necessary rights to the Customer Content, in particular necessary rights in images, trademark rights, copyrights, and that the Customer has effectively obtained all necessary consents and approvals, in particular for the processing of personal data.
- 13.3 The Customer must ensure and guarantee that neither the Customer Content itself nor its input or processing violates any third party rights or infringes any laws, and that Customer Content does not contain or spread any viruses or other malware such as worms or spyware. The Customer assumes sole and unlimited liability towards third parties who claim infringement of rights in connection with Customer Content against SKE or subcontractors used by SKE. All other rights and claims of SKE remain unaffected.
- 13.4 The Customer is aware of and agrees that SKE as well as technical service providers engaged by SKE may have access to Customer content, in particular in connection with the maintenance of the systems used for the provision of the Contractual Services. Section 17 applies.
- 13.5 If SKE has reason to believe, based on factual evidence, that the Customer is using Customer Content in violation of the Customer Agreement, in particular in violation of section 13.3, SKE may inform the Customer thereof and give the Customer the opportunity to either (i) remove the Customer Content in question or (ii) prove that the Customer Content was entered and processed in accordance with the Customer Agreement. If the Customer fails to comply with either of these options within a reasonable period of time, SKE may remove or block the Customer Content in question.

#### **14. Professional Services**

- 14.1 If agreed in the Customer Agreement, SKE shall provide services to support the Customer ("Professional Services"). Professional Services may include, but are not limited to, consulting services, conceptual design services, instruction services, configuration service, support and/or training. The subject matter and scope of the Professional Services are defined in the Customer Agreement. For Professional Services, this section 14 shall prevail.
- 14.2 If training sessions or other means of training by SKE are agreed upon, the Customer shall be solely responsible for ensuring that the participants attend the respective training on the date and at the time agreed upon for this purpose. SKE is not obliged to offer another training session if the Customer's participants do not attend a training session.
- 14.3 If, in the course of the Professional Services, SKE provides the Customer with work results (e.g. algorithms, configurations, concepts, presentations) which are protected by intellectual property rights, SKE shall grant the Customer upon delivery with the exclusive right, without limitation as to content, time and place, to use the newly created components of the work result. Upon delivery, the Customer shall receive a non-exclusive, permanent right, limited in terms of content, to use pre-existing components of the work results (Professional Services) for its own business purposes within the Customer's company and its Affiliates (as defined in Section 15 German Stock Corporation Act (AktG)).
- 14.4 SKE shall perform Professional Services with due diligence and care. SKE is not obligated to achieve a certain success or to provide a certain work result. In particular, SKE shall not be responsible for the Customer achieving a certain economic success through or on the basis of the Professional Services.
- 14.5 If SKE fails to provide Professional Services in accordance with the Customer Agreement and provided that SKE is responsible (Vertretenmüssen), SKE shall repeat the Professional Services concerned without additional remuneration to be paid by the Customer. The Customer shall grant SKE a reasonable period of time for this purpose. Further claims of the Customer shall remain unaffected within the scope of the contractually agreed limitations of liability.

#### **15. Limitation of Liability**

- 15.1 SKE shall be liable without limitation in case of intent, gross negligence and culpable injury to life, body or health.
- 15.2 In the event of slight negligence, SKE shall only be liable in case of breach of material contractual obligations, i.e. obligations the fulfillment of which is a prerequisite for the proper execution of the Customer Agreement or the breach of which jeopardizes the achievement of the purpose of the Customer Agreement, and on the fulfillment with which the Customer may regularly rely. In such cases, SKE's liability is limited to the damage foreseeable at the time of conclusion of the contract and typical for the contract.
- 15.3 SKE shall not be liable beyond section 15.1 and section 15.2 in cases of slight negligence.
- 15.4 The above limitations of liability shall not apply to liability under the Product Liability Act (*ProdHaftG*) and to guarantees assumed by SKE in writing.
- 15.5 Section 15 shall also apply in favor of SKE's employees, representatives, organs and vicarious agents (*Erfüllungsgehilfen*).

#### **16. Contract Term and Termination**

- 16.1 Unless expressly agreed otherwise, the Customer Agreement is entered into for an indefinite period of time and shall terminate in accordance with the following provisions.
- 16.2 Either Party may terminate the Customer Agreement by giving to the other Party notice of at least three (3) months, to take effect at the end of a calendar half-year. However, if a minimum contract term has been agreed upon, termination for convenience shall be possible by giving effect to the termination at the end of such minimum contract term at the earliest.
- 16.3 The right to terminate for good cause remains unaffected.
- 16.4 Any termination must be in text form to be effective.

#### **17. Confidentiality**

- 17.1 "**Confidential Information**" of a Party means information relating to competitively relevant know-how, information marked as confidential or otherwise identifiable as confidential on the basis of an objective recipient horizon, as well as trade secrets of a Party. Confidential Information of SKE shall in each case also include prices and rates agreed with the Customer. The Parties undertake to treat Confidential Information of the other Party confidentially in accordance with this section 17.
- 17.2 Either Party will
- a) treat the other Party's Confidential Information as confidential and use it only for the performance of the Customer Agreement;



- b) not disclose or make accessible the other Party's Confidential Information to their employees or third parties, except to the extent absolutely necessary for the performance of the Customer Agreement (*need-to-know*) and only if such employees or third parties have been obligated to maintain confidentiality; and
  - c) protect the other Party's Confidential Information against access by unauthorized persons through appropriate and suitable measures (e.g., access control, encryption).
- 17.3 Section 17.2 shall not apply to Confidential Information which
- a) a Party has lawfully received or receives from a third party, without breaching a confidentiality obligation;
  - b) was already generally known at the time of the conclusion of the Customer Agreement or subsequently become generally known without any breach of the obligations contained in the Customer Agreement;
  - c) already existed with a Party prior the establishment of the business relationship and is not subject to a confidentiality obligation; or
  - d) is developed independently by a Party.
- 17.4 Furthermore, the Parties may disclose Confidential Information to the extent required by law or by governmental authorities. In such case, the Party concerned shall immediately inform the other Party in writing of the scope and basis of the disclosure.
- 17.5 The confidentiality provisions shall continue to apply for a period of five (5) years after the termination of the Customer Agreement.

## **18. Processing Personal Data on behalf of the Customer**

- 18.1 Insofar as SKE processes personal data on behalf of the Customer when providing the Contractual Services, this shall be done in accordance with the data processing agreement concluded between the Parties (the "DPA"). The DPA shall always prevail within its scope of application.
- 18.2 The Customer shall be solely responsible for the legality of the processing of the personal data within the contractual relationship and for compliance with the relevant requirements of the applicable data protection law, in particular for the proper information of data subjects (Art. 12 et seq. GDPR).
- 18.3 The Customer shall fully indemnify SKE against all claims and official actions and sanctions in connection with the processing of personal data, except to the extent that SKE is responsible (*Vertretenmüssen*) for the unlawful processing and has carried out such processing in violation of the lawful instructions of the Customer. Any further claims and rights of SKE remain unaffected.

## **19. Auditing**

- 19.1 The Customer shall only be entitled to carry out audits if this has been expressly agreed upon in the Customer Agreement or if SKE has expressly agreed to carry out of an audit in advance in an individual case. Unless otherwise agreed, the audit shall in such cases be carried out - subject to section 19.6 - in accordance with this section 19.
- 19.2 The Customer is obliged to inform SKE in due time (regularly two weeks in advance) about all circumstances relating to the intended audit. Unless otherwise agreed, the Customer is permitted to conduct a maximum of one (1) audit per calendar year.
- 19.3 After due notice, the Customer may, at his/her own expense, enter the business premises where the Contractual Services are performed on behalf of the Customer during SKE's normal business hours (Monday to Friday, from 10:00 a.m. to 6:00 p.m.) - without interfering with SKE's business operations - but solely for the purpose of the audit announced by the Customer.
- 19.4 Access to information from or about other customers of SKE, cost information, quality control and contract management reports or other confidential information of SKE is not permitted in the context of an audit by the Customer. SKE is entitled to reject access to any such information. If the Customer becomes aware of such confidential information in the course of an audit, section 17 applies.
- 19.5 The Customer may only commission third parties to carry out the audit if they are bound to confidentiality in the same manner as the Customer himself, and only if the Customer provides respective proof to SKE. The Customer is not permitted to have the audit carried out by competitors of SKE.
- 19.6 The Customer's mandatory statutory rights to information or inspection shall remain unaffected by this section 19. For the provision of information and review in accordance with Art. 28 (3) h) GDPR, the provisions of the DPA shall apply exclusively.

## **20. Marketing and Reference**

- 20.1 SKE may publish and otherwise use the Customer's name and logo in press releases and other marketing materials as well as for advertising purposes on social media platforms and elsewhere on the internet, also as a reference customer and in connection with SKE's products and services. SKE shall, to the extent possible, take into account design specifications provided by the Customer for this purpose.

20.2 The Customer may revoke the permission pursuant to section 20.1 by notifying SKE in text form or written form. Upon receipt of such revocation, SKE's authorization pursuant to section 20.1 ceases with effect for the future. In particular, SKE shall not be obliged to destroy any marketing materials or communications already printed or produced prior to receipt of the revocation, or to remove or recall any published marketing materials or communications.

### **21. Assignment, Set-off, Retention**

21.1 The Parties may only assign rights or obligations arising under this Customer Agreement with the consent of the respective other Party. Section 354a of the German Commercial Code (*HGB*) shall remain unaffected.

21.2 The Customer may only set off against SKE claims arising from the respective Customer Agreement which are undisputed or have been finally legally established by a court of law and may only exercise a right of retention on the basis of such claims.

### **22. Applicable Law and Place of Jurisdiction**

22.1 The Customer Agreement as well as any and all claims, rights and obligations arising out of or in connection with the Customer Agreement shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

22.2 The exclusive place of jurisdiction for all disputes between the Parties arising from or in connection with the Customer Agreement is Bonn, Germany.

### **23. Final Provisions**

23.1 The Customer Agreement, including all documents and appendices incorporated therein, fully reflects the final contractual regulation of all rights and obligations of the Parties relating to the subject matter of the Customer Agreement. No side agreements have been reached.

23.2 Should any provision of the Customer Agreement be invalid or unenforceable, the validity of the remaining provisions of the Customer Agreement shall remain unaffected. The Parties shall replace such provisions by effective and feasible provisions which correspond as closely as possible to the meaning and commercial purpose as well as the intention of the Parties. The same shall apply to unintended loopholes.

23.3 Amendments and supplements to the Customer Agreement must be made in writing to be effective. This also applies to any waiver or modification of this written form requirement.

23.4 Unless expressly agreed otherwise, written form within the meaning of the Customer Agreement shall only be deemed to be satisfied by the postal transmission of a signed original declaration. Electronic form or text form (e-mail or fax) shall not satisfy the written form requirement.

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