

IT purchasing conditions

Version 1st Feb. 2023

In cases of unclear translation, the German version always takes legal precedence.
The German version is published [here](#).

0 Change history

Datum	Name	Bemerkung
30.10.2019	SpeF	creation
15.11.2019	Sco	Updates regarding licenses, maintenance, development
22.11.2019	Sco	Managed Services / Cloud Services chapter added
20.03.2020	Sco	Contractual matter extended
11.05.2020	Sco	Right of use by affiliated companies, increase in maintenance costs, partial termination, return to support
01.02.2023	Sco	ISBP as part of the contract

Inhalt

0	Change history	2
1	General information and scope	4
2	Conclusion of contract, subject matter of the contract	4
3	Place and time of fulfillment, delay	4
4	Principles of software licensing	5
5	Principles for the provision of IT services	6
6	Principles of cooperation	7
7	Prices, terms of payment	7
8	Liability for defects, defaults	7
9	Confidentiality, data protection, information security, retention	8
10	Term and termination	9
11	Insurance	9
12	Prohibition of assignment and prohibition of services by third parties	9
13	Prohibition of advertising	9
14	Miscellaneous	9

1 General information and scope

- 1.1. These General Terms and Conditions (hereinafter: "GTC") apply to all current and future contracts for the purchase of IT products / IT services between Hirschvogel, a company affiliated with Hirschvogel and the supplier (hereinafter: "contractor").
- 1.2. Hirschvogel does not recognise any general terms and conditions of business of the contractor that conflict with or deviate from these GTC unless Hirschvogel has expressly agreed to their validity in writing. The conclusive acceptance of deviating terms and conditions through payment by Hirschvogel is excluded.
- 1.3. Individual agreements made with Hirschvogel in individual cases (including side agreements, additions and amendments) shall take precedence over these GTC if the parties agree otherwise with express reference to these GTC. The text form is decisive for the content of such agreements.

2 Conclusion of contract, subject matter of the contract

- 2.1. These GTC shall be deemed accepted when the contractor accepts an order in text form or begins to provide the delivery or service that is the subject of the order.
- 2.2. The subject matter of these GTC is the delivery and provision of IT products. The specific services to be provided are set out in the order placed by Hirschvogel. In the event of doubts or contradictions, the provisions in these GTC shall take precedence over the order, unless the parties agree otherwise with express reference to these GTC.

3 Place and time of fulfillment, delay

- 3.1. The place and time of fulfillment shall be agreed in the order. If no express agreement is made, the place of fulfillment shall be Hirschvogel's registered office. The dates specified in the order are binding.
- 3.2. Partial/late/advance deliveries are not permitted. In the event of a partial/late/advance delivery, Hirschvogel is entitled to refuse acceptance unless Hirschvogel has expressly agreed to them or they are reasonable for Hirschvogel. Hirschvogel may return the partial/over/late/advance delivery at the expense of the contractor.
- 3.3. The parties shall not be responsible for delays due to force majeure (e.g. strike, lockout, official orders, general disruptions to telecommunications, etc.). If the delay lasts for more than six weeks, either party shall be entitled to withdraw from the order. Further rights remain unaffected.

4 Principles of software licensing

- 4.1. The contractor shall deliver the software in the version specified in the order in object code. At Hirschvogel's request, the parties shall enter into an escrow agreement regarding the source code.
- 4.2. Ownership of the delivered data carrier shall pass to Hirschvogel upon delivery.
- 4.3. The contractor shall provide Hirschvogel with the software for group-wide use for the period specified in the order. All affiliated companies, irrespective of their shares, as well as third parties named by Hirschvogel in the order and Hirschvogel's service providers are entitled to use the software.
- 4.4. If the software is standard software, the contractor shall grant Hirschvogel the non-exclusive rights to use the software for the duration of the contract, unlimited in terms of time, place and content.
- 4.5. If the software is software or software components generated individually for Hirschvogel, the contractor shall grant Hirschvogel the exclusive rights of use to this software, unlimited in terms of time, place and content.
- 4.6. The contractor shall provide Hirschvogel with documentation, in particular documentation for the software, including relevant product literature, operating and user manuals, instructions and other documents required for the use and operation of the software, in Hirschvogel's national language or, if these documents are not available in the national language, in English, at any time and without additional charge. This information also includes all information about software interfaces that are required for Hirschvogel to implement the software.
- 4.7. The contractor guarantees that the software complies with the agreed, in case of doubt the latest state of science, technology and IT security (following the BSI basic protection catalog, module 5.27) and all legal requirements upon delivery.
- 4.8. Hirschvogel is entitled to make and use copies of the software to the extent necessary for backup and archiving purposes. If the software is made available by download, Hirschvogel is entitled to copy this software onto data carriers. The rights are also exhausted in the same way as in the case of a purchase on a data carrier.
- 4.9. Hirschvogel is entitled to purchase additional licenses for the software at the same prices as in the order within 5 years of the order. In addition, Hirschvogel is entitled at any time to decommission individual licenses completely or temporarily or to exchange them for other license types. A price adjustment (reduction of maintenance) shall only be made in the event of decommissioning.

5 Principles for the provision of IT services

- 5.1. If Hirschvogel's data is processed or stored by the contractor in the commissioned IT service, the contractor is obliged to inform Hirschvogel immediately in writing in the event of IT information security incidents.
- 5.2. In the event of termination of the contract, the contractor undertakes to provide Hirschvogel with all data in a neutral format (e.g. XML, CSV...) before the end of the contract and to delete all data from the contractor's systems after the end of the contract.
- 5.3. In the event of termination of the contract, the contractor undertakes to support Hirschvogel with data exports or the development of interfaces for data transfer and to grant missing access or extended authorizations.
- 5.4. To the extent necessary for the operation of the software (in particular in the case of cloud solutions), the Contractor shall operate servers and storage media in Germany and grant Hirschvogel access for auditing purposes upon request. Location changes will only be made after consultation with Hirschvogel. Hirschvogel shall be notified at least 90 days in advance of any auditing of the use of the software by the contractor.
- 5.5. The Contractor shall always keep the software and the systems used by it up to the agreed state of the art, in case of doubt the latest state of science, technology and IT security. Unless provided by Hirschvogel for use, the contractor shall only use proven procedures, tools and tools for the operation and maintenance of the software, the suitability of which it knows, the execution of which it masters and which correspond to the agreed, in case of doubt the latest state of science and technology.
- 5.6. The contractor undertakes to continuously adapt its software with regard to compatibility for use on current operating systems and to deliver updates. If an operating system platform released by the manufacturer runs on "End of Support", the contractor guarantees that its software will be released on the new version and can be used by Hirschvogel no later than 6 months before the end of "End of Support".
- 5.7. Hirschvogel is not obliged to test, accept or install patches, updates, upgrades or new versions of the software. The contractor shall always provide maintenance and support for the software version installed at Hirschvogel under the agreed conditions.
- 5.8. The contractor shall permit the partial termination of maintenance components. Example: In the event of the decommissioning of licenses or discontinuation for the provision of managed services, the maintenance / service amount shall be reduced. The calculation basis is the percentage share of the total software application value of the corresponding license type or the agreed value in the service certificate. Project or implementation costs are not included in the calculation.
- 5.9. The Contractor waives the charging of additional "Return to Support" costs if a previously terminated part of the contract is reactivated.

6 Principles of cooperation

- 6.1. Communication between the contractor and Hirschvogel shall be in German and, if required, in English.
- 6.2. Hirschvogel undertakes to provide the contractor with the data, information and documentation required for the provision of services in full and immediately upon request or to enable access to the systems containing this data and information.

7 Prices, terms of payment

- 7.1. All prices and costs are subject to the statutory value added tax applicable at the time of invoicing. All taxes and duties of any kind incurred in connection with payments by Hirschvogel and imposed on Hirschvogel by tax authorities shall be borne by the contractor. Unless otherwise agreed, the prices are fixed prices that include all ancillary costs (such as transportation and installation costs, customs duties, travel expenses, surcharges, lump sums, costs of obtaining rights of use, etc.).
- 7.2. The Contractor shall issue an invoice in accordance with the statutory requirements and shall indicate in the invoice whether the service is subject to VAT or not subject to VAT.
- 7.3. Invoices must be complete and verifiable and, in particular, itemized according to the invoice-relevant attachments.
- 7.4. Invoices properly issued in compliance with VAT regulations shall be due and payable 30 days after receipt by Hirschvogel.
- 7.5. Price increases based on gross earnings in the IT sector must be justified by the contractor and cannot be demanded without the written consent of Hirschvogel. If the contractor requests an increase that exceeds the quarterly surveys of the German Federal Statistical Office for the provision of services in the information technology sector (Index J62), Hirschvogel shall generally object to this.

8 Liability for defects, defaults

- 8.1. The contractor shall be responsible for ensuring that its contractual services are free from defects. A defect shall also be deemed to exist if the software cannot be used without consent to the license terms of a third-party provider and the contractor has not pointed out this circumstance before conclusion of the contract by sending the third-party terms. The same applies if the software contains open source.
- 8.2. Unless otherwise agreed, defects in the performance of the services shall be remedied by the contractor within an agreed period or a period specified by Hirschvogel without additional costs after corresponding notification by Hirschvogel. § Section 377 HGB is waived.
- 8.3. If the contractor fails to provide the service in accordance with the contract within the given deadline, Hirschvogel shall be entitled to withdraw from the contract. Further rights remain unaffected.

9 Confidentiality, data protection, information security, retention

- 9.1. The parties shall treat as confidential all business secrets of the other party that come to their knowledge in connection with the performance of the activity - also and insofar as they relate to third parties - and shall keep them secret from third parties. Business secrets also include technical know-how, operating methods, security measures, Hirschvogel data and sources of supply ("Information"). The duty of confidentiality and the duty to treat information, documents and files confidentially shall also apply to employees of the respective party, unless they are involved in the cooperation in the interest of the company and are entrusted with the processing of the contractual service. The disclosure of information to third parties requires the prior approval of the other party in text form.
- 9.2. The obligation to maintain confidentiality shall not apply to information that was already known to the parties at the time of conclusion of the contract or that becomes known to the parties outside of their cooperation. The parties shall be released from the obligation of confidentiality if they are required to disclose the information received due to statutory provisions or orders of state bodies, but not before the facts have been notified to the other party in writing.
- 9.3. The above confidentiality obligations shall survive the termination of this contractual relationship for a period of 5 years. Further confidentiality agreements shall take precedence over this provision.
- 9.4. If Hirschvogel commissions the contractor to process personal data, the contractor shall process this data in compliance with the applicable statutory data protection provisions. In particular, the contractor is obliged to protect the personal data from misuse and loss and to take appropriate technical and organizational measures in accordance with the latest state of the art. The contractor shall inform Hirschvogel immediately if, in the contractor's view, Hirschvogel's orders contravene the statutory data protection provisions.
- 9.5. If the contractor processes personal data for Hirschvogel, the contracting parties shall conclude an agreement 'Contractual provisions for commissioned data processing in accordance with Article 28 EU GDPR' in order to comply with data protection regulations'.
- 9.6. If the contractor receives access to Hirschvogel's IT systems, the annex "Agreement on Information Security with Business Partners" shall be a binding part of the contract. The current version of the document AHV 100000299 ISBP shall be provided to the contractor by Hirschvogel for this purpose.
- 9.7. The contractor shall ensure compliance with international standards for information security, e.g. ISO 27001, 27017, etc. Proof of certification must be presented to Hirschvogel upon request.
- 9.8. The contractor warrants that the software is protected against malfunctions (e.g. by viruses or other malware) and has been checked for their presence. If, in the opinion of Hirschvogel, there is reason to assume that so-called viruses are present, the contractor shall support Hirschvogel in clarifying the matter and shall provide Hirschvogel with a virus-free copy free of charge. Insofar as the contractor is responsible for the development, the contractor shall also guarantee that the development is free of defects. Specifically, the contractor shall ensure that the software does not contain any undocumented or hidden functions, e.g.: access installations for maintenance/support purposes, hidden options for aborting the

regular program flow, unremoved debugging code and accounts (e.g. user ID and password).

- 9.9. Upon termination of the contract, the contractor confirms that all information and documents relating to Hirschvogel, whether in paper or digital form, will be deleted or destroyed, e.g. media as part of backup processes or other connected IT systems. Furthermore, the contractor shall grant Hirschvogel the right to export its data before deletion.

10 Term and termination

- 10.1. This agreement is concluded for the period specified in the order, otherwise for an indefinite period.
- 10.2. This agreement may only be terminated by Hirschvogel in the case of a limited term and by either party in the case of an unlimited term with a notice period of six (6) weeks to the end of a calendar year, but for the first time at the end of the calendar year in which the first anniversary of the conclusion of this agreement occurs.
- 10.3. In addition, this agreement may be terminated in writing by either party without notice for good cause. Good cause shall be deemed to exist in particular if a party repeatedly breaches a material contractual obligation and fails to remedy this breach despite a warning notice. One party shall also be deemed to have good cause if the other party suspends its business operations in whole or in part for more than six (6) weeks, irrespective of the reason for the suspension.
- 10.4. Notice of termination must be given in writing.

11 Insurance

The contractor shall be obliged to insure the contractual risks appropriately at its own expense and to provide proof of insurance cover on request.

12 Prohibition of assignment and prohibition of services by third parties

- 12.1. The transfer of the provision of contractual services to third parties by the contractor requires the prior consent of Hirschvogel in text form, which may not be unreasonably withheld.
- 12.2. An assignment of claims by the contractor requires the prior written consent of Hirschvogel. § Section 354a HGB remains unaffected.

13 Prohibition of advertising

All publications in the press, radio, television, internet and other media by the contractor about the contractual relationship between the contractor and Hirschvogel must be approved by Hirschvogel prior to publication.

14 Miscellaneous

- 14.1. Amendments and supplements to these GTC must be made in writing to be effective. This also applies to the waiver of this written form requirement.

- 14.2. Legal relationships arising for the parties on the basis of or in connection with these GTC shall be governed by German law, to the exclusion of the provisions on the international sale of goods (CISG) and the conflict of laws, unless mandatory law provides otherwise.
- 14.3. The contracting parties agree that the place of jurisdiction for all legal disputes arising from or in connection with this contract shall be the Hamburg Regional Court, Chamber for IT Legal Matters.
- 14.4. Should individual provisions of these GTC or other contractual provisions between the parties be or become invalid or should these GTC be or become incomplete in individual points, the validity of the GTC and the other agreements between the parties shall remain unaffected. In this case, the contracting parties shall immediately enter into negotiations in order to replace the missing or ineffective provisions with provisions that correspond to the meaning and purpose of the terms and conditions of purchase and bring about the intended economic success.