

General Terms and Conditions of ~sedna GmbH

Scope: Consulting, planning and implementation services as well as delivery of goods
As of: November 2022

1 General information

- 1.1 These General Terms and Conditions (hereinafter "**GTC**") shall apply to all contracts between ~sedna GmbH, Salzufer 13F, 10587 Berlin, Germany, registered in the Commercial Register at the Local Court of Berlin (Charlottenburg) under HRB 78217 (hereinafter: "**~sedna**") and its customers (hereinafter: "**customer**") for all consulting, planning and implementation services commissioned to ~sedna GmbH by the customer as well as for sale of goods to the customer, with the exception of the provision of standard software (hereinafter "**service**" or "**services**"). For the provision of standard software, the General Terms and Conditions of ~sedna GmbH for perpetual use (sale of standard software) or for temporary use (rental of standard software) shall apply. Unless otherwise agreed, the GTC in the version valid at the time of the customer's order or, in any case, in the version last communicated to the customer in text form, shall also apply as a framework agreement for similar future contracts, without ~sedna having to refer to the GTC again in each individual case.
- 1.2 These GTC and the documents referenced therein shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the customer shall become part of the contract only if and as far as ~sedna has expressly consented to their validity. This consent requirement applies in every case, for example, also if ~sedna provides the services to the customer without reservation and with knowledge of the customer's general terms and conditions.
- 1.3 Offers by ~sedna are always subject to confirmation. Contracts shall come into existence only by means of a written confirmation by ~sedna. If ~sedna does not expressly confirm verbal or telephonic agreements in writing, the invoice issued by ~sedna shall be regarded as confirmation.
- 1.4 Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTC in each case. A written contract or written confirmation by ~sedna is authoritative as regards the content of such agreements.
- 1.5 References to the validity of statutory provisions are solely for the purpose of clarification. The statutory provisions shall therefore apply even without such clarification, provided these provisions are not actually amended or expressly excluded in these GTC.

2 Offer, Subject matter of contract

- 2.1 If ~sedna has made an offer to the customer and this offer is expressly designated as binding, ~sedna shall be bound to this offer for a period of 14 calendar days.
- 2.2 Unless otherwise agreed, the services shall be rendered on the basis of the plan submitted by the customer in advance. This shall contain a correct, complete and conclusive description of the scope of services to be rendered by ~sedna.

3 Approval, Modifications of the assignment

- 3.1 If a concept has to be developed for the services to be rendered after the order has been placed, ~sedna shall allow the customer a test period of five working days to determine whether his requirements are reflected in the concept. The customer shall declare his approval in writing within

the period mentioned above. On approval, the concept for further development service shall become a binding contractual basis.

- 3.2 The approval shall be deemed to be declared if ~sedna requests the customer for approval at the end of the test period, stating that this will make the concept binding, and the customer does not raise any objections within a further period of two working days.
- 3.3 ~sedna's consent is required if the customer wishes to modify any components of the order after the order has been commissioned. ~sedna is obliged to consent to modifications, provided the modifications can be executed within the agreed period of performance and the additional costs resulting from the order modification are reasonable. ~sedna reserves the right to a reasonable period of time to examine the effects of order modification on adherence to schedules and cost calculations. In the event of consent, ~sedna is entitled to demand an appropriate adjustment of the remuneration in accordance with the change.
- 3.4 Order modifications must always be made by the customer in writing and are only effective if they have been confirmed in writing by ~sedna. If order modifications make it necessary to modify a functional specification of detailed concepts or technical drafts, ~sedna shall carry out these modifications.

4 Order execution and delivery

- 4.1 All services provided by ~sedna correspond to the relevant state of the art at the time of provision of service.
- 4.2 The services shall be provided at the expense and risk of the customer at the address stated in the offer. The risk of accidental destruction or deterioration of the object of purchase shall pass to the customer upon delivery of the service to the carrier determined by ~sedna.
- 4.3 In the case of delivery of computer hardware, the customer will receive the designated documentation provided by the manufacturer (operating instructions/user manual) in addition to the hardware components described in the offer. Unless expressly agreed otherwise, the subject matter of the respective order does not include setting up, installation, or establishing of technical operational readiness.
- 4.4 ~sedna has the right to use subcontractors for the performance of this contract.

5 Remuneration and terms of payment

- 5.1 The respective remuneration for the services shall be laid down in the contract.
- 5.2 ~sedna's payment claims are due for payment immediately after invoicing, without any deduction. Unless otherwise agreed in writing in individual cases, all fees shall be "net" fees in Euro plus value-added tax at the statutory rate in each case, if value-added tax is payable. Payments by the customer shall be made on the oldest invoice and shall not be deemed to have been made until they have been credited to one of ~sedna's bank accounts.
- 5.3 The timeliness of all payments shall be determined by the date on which the payments are credited to ~sedna's account specified in the invoice.
- 5.4 Default interest shall be nine (9) percentage points above the applicable base interest rate in each case.

6 Period of performance

- 6.1 ~sedna's period of performance shall commence when all technical questions have been clarified with the customer. Deadlines for deliveries and services shall only be deemed to be agreed as binding with the customer if these deadlines have been expressly confirmed as binding by ~sedna in writing.
- 6.2 The timely and proper fulfilment of the customer's co-operation obligations is a prerequisite for compliance with the performance obligation.
- 6.3 Delivery and service deadlines that have been agreed shall be extended by the period in which ~sedna is prevented from rendering the service by circumstances for which ~sedna is not responsible. The same applies to the period in which ~sedna waits for information or cooperation from the customer.

7 Co-operation obligations of the customer

- 7.1 The customer shall submit all the information and documents required to execute the order to ~sedna without delay. The customer shall provide ~sedna with the required basic material, such as data, moving and still images, illustrations, graphics, logos, proofread texts and other materials and information, in digital form in formats to be agreed upon, in order to execute the contract in accordance with the detailed specifications in the respective concept. If the basic material is provided in another form, the corresponding additional expense will be charged separately.
- 7.2 If orders are to be executed at the customer's site, the customer shall provide ~sedna with the necessary workstations and equipment.
- 7.3 Moreover, the customer shall create all conditions necessary for the execution of the order. ~sedna shall be entitled to terminate the contract if the customer does not comply with these co-operation obligations despite a reminder and fixing of a time limit.
- 7.4 The customer shall name an appropriate, qualified contact person for all questions related to the commissioned project for the duration of the services to be rendered by ~sedna. This contact person must be authorised to make decisions vis-à-vis ~sedna in all contractual matters.
- 7.5 If ~sedna has agreed with the customer that a test phase will be carried out prior to acceptance, this contact person shall be available to ~sedna at any time during this period.
- 7.6 If the customer commissions ~sedna with the creation and implementation of individual software, the customer shall provide the necessary hardware for the implementation. The customer shall ensure that this hardware meets the technical requirements required for the use of the software.

8 Acceptance

- 8.1 Work that has been completed must be accepted. Services, and in particular, consulting and support services, shall not be available as services for acceptance, unless the need for acceptance of the service has been expressly specified.
- 8.2 ~sedna shall inform the customer when the respective service or partial service is ready for acceptance. The customer must test the service and accept it without delay. The declaration of acceptance requires the written form (acceptance protocol). The acceptance protocol shall be drawn up by ~sedna and countersigned by the customer.

- 8.3 Any defects found in the service or partial service to be accepted shall be differentiated according to the following defect classes:

Defect class 1: The service as a whole, or the part of the system to be accepted, cannot be used due to the defect.

Defect class 2: The defect causes considerable restrictions in the use of important functions and these restrictions cannot be circumvented by suitable measures within an appropriate period of time considered reasonable by the client.

Defect class 3: All other defects.

The customer shall only be entitled to refuse acceptance due to defects of defect classes 1 and 2. Defects of defect class 3 do not prevent acceptability of the service. However, these defects must be remedied within the scope of claims based on defects. These defects shall be recorded as defects in the written declaration of acceptance.

- 8.4 If the customer does not declare acceptance at the latest within 10 calendar days of ~sedna's notification of readiness for acceptance, ~sedna may fix a period of one week, in writing, for the customer to submit this declaration. Acceptance shall be deemed to have taken place if the customer does not specify the reasons for refusing acceptance, in writing, within this period.

9 Contract term, Termination

- 9.1 In the case of services under a contract for work and services, the respective contractual relationship shall commence upon conclusion of the contract and end with the respective acceptance of the services. The customer's right of termination according to Section 648 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) is excluded.
- 9.2 The contract shall have a fixed term of 12 months in all other cases not related to the purchase or manufacture of goods. It shall then be automatically renewed for a further period of 12 months each time unless terminated by either party with one month's notice before the end of the fixed term or renewal period. Apart from this, the right of the parties to ordinary termination of the contract is excluded.
- 9.3 The right of the parties to terminate the contract in exceptional cases for good cause shall remain unaffected.
- 9.4 All notices of termination require the written form.

10 Warranty

- 10.1 ~sedna warrants that the services commissioned in accordance with the contractual agreement are free of any defects that preclude or restrict their suitability for the contractual purpose. Product descriptions shall not be deemed a warranty without a separate written agreement.
- 10.2 If the customer is an entrepreneur, he must check the commissioned services for obvious defects immediately after receipt of the services and inform ~sedna of any such defects immediately; otherwise, a warranty for these defects is excluded. The same shall apply if such a defect becomes apparent later. Section 377 of the German Commercial Code (Handelsgesetzbuch – HGB) shall apply.

- 10.3 Furthermore, the customer is obliged to notify ~sedna in writing of any defects in the commissioned services immediately after these defects are discovered. In the case of material defects, this notification shall include a comprehensible description of the error indications, the time of occurrence of the defects and the detailed circumstances, proved by written records or other documents illustrating the defects as far as possible. The notice of defects should enable the reproduction of the defect. If ~sedna provides the customer with a template to report defects, this must be used for the notice of defects.
- 10.4 ~sedna shall remedy defects at its discretion either by rectification of the defect or by replacing the defective product free of charge. The customer shall support ~sedna to a reasonable extent in this case. When delivering individual software, the customer shall ensure that the corresponding hardware, on which the result of the respective order is used, is made available to ~sedna for the duration of the error elimination measures and troubleshooting.
- 10.5 The customer's right to reduce the purchase price or to withdraw from the contract at his discretion if the rectification of the defect or replacement delivery fails on two occasions remains unaffected. A right of withdrawal does not exist in the case of insignificant defects.
- 10.6 The customer's rights due to defects are excluded if the customer makes changes to the commissioned services or allows changes to be made without ~sedna's consent, unless the customer proves that the changes do not have an unacceptable effect on ~sedna's analysis and elimination of the defects. The customer's rights due to defects shall remain unaffected if the customer is entitled to make changes and these have been carried out professionally and documented in a comprehensible manner.
- 10.7 The customer's claims on account of defects shall become time-barred within twelve (12) months, unless a defect is based on a grossly negligent or intentional breach of duty or on fraudulent concealment of a defect. In such cases, the statutory provisions shall apply.
- 10.8 The customer may assert claims for damages within the framework of the agreed limitations of liability (Item 12).

11 Third-party property rights

- 11.1 ~sedna shall defend the customer against all claims derived from an infringement of third-party rights when the service is used in accordance with the contract. ~sedna shall assume the costs and compensation amounts imposed on the customer by court order, provided that the customer has informed ~sedna of such claims immediately in writing and all rights concerning defensive measures and settlement negotiations remain reserved for ~sedna. Liability for the infringement of third-party rights is further limited to third-party rights within the European Union and the European Economic Area and the place at which the delivered services are used in accordance with the contract.
- 11.2 If claims in accordance with Item 11.1 have been asserted or are to be expected against the customer, ~sedna may modify or exchange the respective service at its expense to an extent considered reasonable by the customer. If this is not possible or if it is not possible to obtain a right of use with reasonable effort, each party to the contract can declare withdrawal from the contract for the relevant service, in case the service infringes the property rights of third parties. In this case, ~sedna shall be liable to the customer in accordance with Item 12 for the loss resulting from the withdrawal.
- 11.3 Claims of the customer due to defects of title shall become time-barred in accordance with Item 10.7.

12 Liability

~sedna shall be liable for losses only in accordance with the following provisions:

- 12.1 For losses which are based on a slightly negligent breach of duty, ~sedna's liability is limited to the foreseeable loss typical for the contract, the occurrence of which the customer had to anticipate at the conclusion of the contract due to the circumstances known to him at that time. Liability for all losses is hereby limited to a total amount which corresponds to 100 percent of the agreed remuneration (excluding taxes) of the relevant service.
- 12.2 ~sedna shall be liable without limitation for all losses resulting from an intentional or grossly negligent breach of duty or an injury to life, limb or health.
- 12.3 ~sedna shall be liable for the loss of data and its recovery as specified in this Item 12 only as far as such loss could not have been avoided by appropriate data backup measures on the part of the customer. This liability shall be limited in amount to the expenditure which would have been incurred by the customer for restoration if the data had been backed up properly and regularly in a manner corresponding to the significance of the data. This shall not apply if the data back-up was prevented or became impossible for reasons for which ~sedna is responsible.
- 12.4 Claims for damages in accordance with the above provisions shall include claims for reimbursement of expenses.
- 12.5 Any guarantee bonds that are to be submitted shall require a separate agreement, which shall be attached to the contract as an appendix. The use of terms such as guarantee, assurance or assured quality does not in itself constitute a guarantee within the meaning of the German Civil Code (Bürgerliches Gesetzbuch – BGB), but is rather to be understood exclusively as a description of performance.
- 12.6 Liability under the Product Liability Act remains unaffected.
- 12.7 Liability for lost profits and unrealised savings is excluded. ~sedna is not liable for customer's lack of economic success.
- 12.8 The above limitations of liability also apply analogously in favour of the employees and authorised representatives of ~sedna.

13 Reservation of ownership

- 13.1 The service delivered by ~sedna will remain the property of ~sedna until full payment of all outstanding claims or future claims arising from the business relationship with the customer, regardless of the type of claim and its legal basis. In the case of a current account, the reserved ownership shall serve as security for any balance claim.
- 13.2 ~sedna is furthermore entitled to cancel the service in the event of default of payment by the customer or other conduct contrary to the terms of the contract. Cancellation does not constitute withdrawal from the contract. Withdrawal requires an express written declaration by ~sedna.
- 13.3 Attachment of service by ~sedna always constitutes withdrawal from the contract. ~sedna shall be entitled to exploit the service after it is cancelled. The proceeds of exploitation – less reasonable costs of exploitation – shall be set off against the customer's liabilities.

14 Rights of use and exploitation, Copyright notice

- 14.1 The customer shall receive non-exclusive and non-transferable rights of use and exploitation to ~sedna's services for the contractually agreed purpose, subject to the condition precedent of remuneration in full for the commissioned service.
- 14.2 ~sedna is entitled to keep a copy of the service result for archiving purposes, name it as a reference project to third parties and designate the customer by name in these references. ~sedna is entitled to be named as the creator of any services or partial services developed by ~sedna within the scope of its services for the customer. In this case, ~sedna is entitled, after consultation with the customer, to affix a copyright notice in the standard market form and design to the service result.

15 Confidentiality

- 15.1 The parties are obliged to maintain secrecy regarding trade secrets and other confidential information (information and documents which are marked as confidential or which, under the circumstances, must be regarded as confidential. This especially includes information about operational processes, business relationships and know-how).
- 15.2 This obligation does not include confidential information (a) which can be proved to have been already known to the recipient at the time of conclusion of the contract or which subsequently becomes known from third parties without thereby violating a confidentiality agreement, statutory regulations or official orders; (b) which is publicly known at the time of the conclusion of the contract or is made public thereafter, provided that this is not based on a breach of this contract; (c) which must be disclosed pursuant to statutory obligations or by order of a court or authority; the recipient obliged to disclose shall inform the other party in advance, to the extent permitted and possible, and give them the opportunity to oppose such disclosure.
- 15.3 The parties shall grant access to confidential information only to persons who are bound by professional secrecy or who have previously been subject to obligations corresponding to the confidentiality obligations of this contract. Furthermore, the parties shall disclose confidential information only to those employees who have to know this information in order to perform this contract, and shall require such employees to maintain confidentiality.

16 Data protection

- 16.1 The parties shall observe the relevant data protection regulations.
- 16.2 Should ~sedna come into contact with the customer's personal data, a written agreement on commissioned processing in accordance with Art. 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data (General Data Protection Regulation – GDPR) must be concluded prior to this. In this case, ~sedna shall make such an agreement available to the customer. ~sedna shall process personal data only within the meaning of the GDPR and the Federal Data Protection Act (BDSG), and within the scope of the customer's instructions in every case. The customer shall in all cases remain responsible for any personal data processed by ~sedna within the scope of performing the contract. The customer is solely responsible for the permissibility of the data processing that is carried out as instructed.

17 Closing Provisions

- 17.1 The customer may offset ~sedna's claims against a counterclaim or exercise a right of reduction or retention only if his claim is undisputed or has been recognised by declaratory judgement.
- 17.2 The parties are aware that the services may be subject to export and import restrictions. In particular, they may be subject to licensing obligations, or the use of the services or associated technologies abroad may be subject to restrictions. The customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as all other relevant regulations. The fulfilment of the contract by ~sedna is subject to the proviso that there are no obstacles to fulfilment due to national and international regulations of export and import law or any other statutory regulations.
- 17.3 Amendments and supplements to the GTC require the written form. This also applies to any amendment or revocation of this clause. Transmission by telefax or e-mail complies with the written form requirement, in as far as receipt of the telefax or e-mail can be proved.
- 17.4 Claims due to non-contractual service provision, regardless of the legal basis of such claims, shall become time-barred one (1) year after the customer may have gained knowledge thereof, but no later than two (2) years after the damaging event, unless shorter statutory limitation periods apply.
- 17.5 The place of performance is the registered office of ~sedna. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the rules referring to other legal systems. The exclusive place of jurisdiction is Berlin.
- 17.6 Should individual provisions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The parties shall endeavour to replace the invalid or unenforceable provision with a provision that comes closest to the legal and economic purpose of the contract. This shall apply correspondingly in the event of a contractual gap.