# Standard Terms and Conditions of STACKFORCE GmbH
# for Services and Project-Services

## 1. Applicability

(1) These standard terms and conditions shall apply to all contracts between STACKFORCE GmbH and its customers in respect of services (Leistungen), in so far as not otherwise explicitly agreed upon in writing.

(2) These standard terms and conditions shall only apply, if the customer is an entrepreneur or if the customer is a legal person or a special fund under Public Law in the meaning of § 310 para. (1) Sentence 1 BGB (German Civil Code).

(3) The standard terms and conditions of STACKFORCE GmbH shall apply exclusively. Contrary or deviating terms of the other party shall only be binding if and to the extent that STACKFORCE GmbH explicitly consents to their validity in writing. The standard terms and conditions of STACKFORCE GmbH apply, even if STACKFORCE GmbH fulfills the order of the customer without reservation in the knowledge of contrary or deviating terms of the customer. Deviating agreements apply only to a particular agreement and not to future agreements, unless otherwise explicitly agreed upon in writing.

(4) The standard terms and conditions shall also apply to all future agreements between STACKFORCE GmbH and its customers for services (Leistungen).

## 2. Scope of orders

(1) The services (Leistungen) of STACKFORCE GmbH will be provided in any one case within the scope determined in the offer which remains open until the conclusion of the contract as services (Dienstleistungen) and/or project-services (Werkleistungen) in accordance with the applicable statutory requirements unless otherwise provided in these standard terms and conditions. In case it is not stated differently within the offer, it remains valid until four weeks after the date of the offer. STACKFORCE GmbH provides services (Dienstleistungen) (consultation and support of the customer) at its own responsibility. The customer is, however, himself responsible for the results desired and achieved by him. In the case of project-services, STACKFORCE GmbH is responsible for the results to be achieved as well as the management, control, and observation of the provision of the service.

(2) STACKFORCE GmbH and the customer are each authorized to apply in writing for modifications to the agreed upon scope of services. STACKFORCE GmbH and/or the customer shall examine the possibility of implementing this modification after service of the application therefore. The result of this examination shall be communicated to the other party in writing without delay. STACKFORCE GmbH is authorized to invoice its costs to the ordering party, in so far as the ordering party's application for modification requires a comprehensive and costly examination. The contractual adjustments necessary for such an examination and/or for a modification to the agreed upon scope of services shall be set forth in a supplementary agreement.

## 3. Fulfillment of orders

(1) Orders shall be fulfilled observing the current state of science and technology.

(2) Only STACKFORCE GmbH is authorized to direct its employees.

(3) STACKFORCE GmbH is authorized to obtain the services of third parties for the fulfillment of orders. STACKFORCE GmbH alone, however, remains directly obligated to the customer.

(4) For project-services, delivery times shall be counted from the date STACKFORCE GmbH acknowledges the order but not before all details of the order have been fully clarified; accordingly,

this applies to delivery dates as well. All delivery times and dates shall be conditional on availability and the timely receipt of vendor deliveries.

(5) Unless stipulated otherwise, the criterion for adherence to the delivery times and dates is the day of placing the service (Leistung) at the disposal of the customer at the registered office of STACKFORCE GmbH.

(6) In cases of force majeure the contractual obligations of both parties are suspended and the delivery times and dates for the fulfillment of such contractual obligations shall be postponed accordingly; force majeure shall include, but is not limited, to strikes in internal and external companies, freight forwarding delays, machinery breakdown, government actions as well as other circumstances beyond the control of either party. Any occurrence of force majeure shall be immediately reported to the respective other party. Three months at the earliest after the receipt of such notification, both parties shall have the right to withdraw from this contract.

(7) In the event of non-adherence to the delivery times and dates in case of project-services the customer shall be entitled to claim damages in lieu of performance for non-performance or failure to render performance as owed according to § 281 BGB (German Civil Code) and to raise a plea of lack of performance of the contract according to § 323 BGB (German Civil Code) but only after having given STACKFORCE GmbH a reasonable grace period for the delivery in combination with a caveat - notwithstanding the provisions of §§ 281, 323 BGB (German Civil Code) - stating that, after expiration of the grace period, acceptance of the project-services will be rejected; once the grace period has expired without success, any claim for delivery shall be excluded.

## 4. Duties of the customer

(1) The customer shall provide STACKFORCE GmbH in sufficient time before the fulfillment of the order, without charge, all information, materials, devices, documents and things, plans, etc., necessary for the fulfillment of the order, and shall do so, if necessary, at its own cost.

(2) In so far as STACKFORCE GmbH carries out its duties at the location of the customer, the customer shall provide the personnel of STACKFORCE GmbH, or of the third parties mandated by STACKFORCE GmbH access to all space, installations (hardware, software, networks, etc.) and other instrumentalities, during the usual business hours and within operational rules of access without cost, which is ordinarily necessary for STACKFORCE GmbH to provide the service. If need be, the customer will obtain functional work stations (Arbeitsplätze), at no cost to STACKFORCE GmbH, for the employees of STACKFORCE GmbH or for third parties mandated by STACKFORCE GmbH.

(3) The customer will furthermore participate in any way necessary in the fulfillment of the order.

(4) If the customer does not or does not timely fulfill his obligations under paras. (1) - (3) and if this leads to delays and/or additional work, the agreed upon time frame and/or the agreed upon remuneration shall increase accordingly.

## 5. Remuneration and payment times

(1) The services and project-services will be invoiced at the unit price stated in the offer or based on a time-and-materials basis as set forth in the offer after rendering of services (Dienstleistungen) or acceptance of the project-services, unless another form of invoice and payment is agreed upon in the offer. In the case of services (Dienstleistungen) and project-services on a time-and-materials basis, the accruing hours worked and travel time shall be invoiced at the applicable hourly rates and the used materials at the prices applicable at the time of the service (Leistung). Other costs, especially commuting, food, and lodging, will be additionally invoiced. Estimated prices for services (Dienstleistungen) and project-services on a time-and-materials basis contained in the offer are non-binding.

(2) Value-added tax shall be invoiced separately at the applicable value-added tax rate.

(3) Invoices are payable upon receipt and in full. Unless otherwise agreed, the customer shall be in default of payment, if invoices are not paid within 14 days after the date of invoice without the need of a separate reminder according to §281 para (1) BGB (German Civil Code).

(4) In case of default, interest shall be payable at the rate of nine percentage points above the base rate of the European Central Bank. The right to claim further damages shall not be excluded. The rules of §288 para (1) BGB (German Civil Code) remain unaffected.

(5) Multiple customers are jointly liable.

(6) The customers can only set off non-appealable or unchallenged counterclaims or counterclaims recognized by STACKFORCE GmbH.

## 6. Acceptance

(1) Project-services shall be accepted by the customer as soon as STACKFORCE GmbH has demonstrated compliance with the agreed-upon description of services (Leistungsbeschreibung). Immaterial deviations do not authorize the ordering party to refuse acceptance. The obligation to cure defects within the scope of liability for warranties remains unaffected thereby.

(2) Confirmation of compliance with the agreed upon description of services shall be prepared by both parties by the mutual execution of a protocol of acceptance.

(3) Placing the result of the project (des Werkes) in operation and/or the productive use of the project or of parts of the project shall be deemed to be an acceptance.

(4) Following the rules of §640 para (1) sentence 2 BGB (German Civil Code), it corresponds to an acceptance, if the customer does not execute the acceptance of the services or of the results of the project within an adequate time determined by STACKFORCE GmbH, although the customer is obliged to do so.

## 7. Warranties in the case of project-services

(1) STACKFORCE GmbH warrants that project-services are performed free from defects of material or of title. In particular the project-services performed are in accordance with the agreed-upon description of services (Leistungsbeschreibung) and with the agreed-upon scope of services (Leistungsumfang).

(2) In case of defects of the project-services, STACKFORCE GmbH shall be liable as follows:

a) At the discretion of STACKFORCE GmbH, STACKFORCE GmbH shall cure the defects or perform new project-services.

b) In the case of failure to cure within a reasonable time, the customer may at his own choice reduce the payment or, insofar as the value or usability of the project should be substantially reduced, demand rescission of the contract, provided that claims for further damages and claims for reimbursement of expenses remain unaffected hereof.

c) In the case of defects of material or of title, the customer shall notify STACKFORCE GmbH immediately hereof in writing.

(3) The limitation period for warranty claims shall be twelve months from rendering of the respective service and acceptance of the project respectively. In case the legal provisions in § 438 para. (1) No. 2, § 479 para. (1) or § 634a para. (1) No. 2 BGB (German Civil Code) provide for longer limitation periods, these shall prevail.

(4) Statements in documentation, prospectuses, project descriptions, etc. do not constitute warranties or guarantees. Warranties or guarantees require the explicit written confirmation of STACKFORCE GmbH in any case.

(5) Apparent errors such as typographical errors, calculation errors, defects of form, etc., which are contained in a report, expert opinion, or other professional utterance of employees of STACKFORCE GmbH may be corrected by STACKFORCE GmbH at any time.

## 8. Liability

(1) Claims for damages and for reimbursement of expenses of the customer (hereinafter claims for damages), based on whatever reason, in particular for breach of contractual obligations and based on tort, shall be excluded.

(2) Notwithstanding it. 8 para. (1) STACKFORCE GmbH shall only be liable, based on whatever reason, if:

a) STACKFORCE GmbH acts with intent or gross negligence,

b) STACKFORCE GmbH fraudulently concealed the defect or warranted the quality of services and project-services,

c) STACKFORCE GmbH has willfully or negligently caused damage to life, body or health of persons,

d) STACKFORCE GmbH has violated essential contractual obligations. Essential contractual obligations are obligations, the fulfillment of which is a prerequisite of the proper implementation of the contract and the customer is justified in relying on routinely.

(3) In the event of violation of essential contractual obligations, according to it. 8 para. 2 (d) STACKFORCE GmbH's liability shall be limited to the typically forseeable amount of damages in cases of ordinary negligence. This claim of damages is subject to the limitation period applicable for warranties under it. 7. para. (3) above.

(4) The exclusion of liability shall not be applicable to claims arising out of the German Product Liability Act (Produkthaftungsgesetz).

(5) The aforementioned regulations shall not imply a change of burden of proof at the expense of the customer.

(6) In the event STACKFORCE GmbH defaults on project-services, the customer shall be entitled - as far as he proves that he has suffered damages therefrom - to claim a compensation in the amount of 0.5% for every accomplished week of delay, totaling however not more than 5% of the total payment for that part of the service not timely completed. The provision of this it. 8 para. (2) remains unaffected. The customer shall be obliged, upon the request of STACKFORCE GmbH, to declare within a reasonable time, whether he rescinds the contract because of the delay of the project-services and/or claims damages instead of performance or requests continued performance of the services; once the grace period has expired without success, any claim for delivery shall be excluded.

(7) In so far as the liability of STACKFORCE GmbH is limited, this shall also apply to the employees of STACKFORCE GmbH and to any third parties mandated by it.

(8) The customer shall notify STACKFORCE GmbH without delay in writing of any damages for which STACKFORCE GmbH may be responsible, and give STACKFORCE GmbH the opportunity to examine the damages and their cause.

## 9. Confidentiality

(1) The parties shall not make economic, technical and other information and knowledge, either made available by the respective other party in the preparation and execution of orders or otherwise having come into the knowledge of the parties, available to third parties or use it for their own purposes beyond the purposes of the order without the prior written consent of the respective other party for the duration of the mandate.

(2) The obligation in accordance with para. (1) does not apply to information and knowledge, which

- was known to the receiving party before the issuance of the mandate,

- the receiving party legally received from third parties,

- was generally known upon the issuance of the mandate,

became known subsequently without a breach of the obligation in accordance with para. (1)

(3) The obligation under para. (1) applies to both parties after the expiration of the mandate for another two years.

(4) The customer recognizes the necessity of scientific presentations and publications by STACKFORCE GmbH and will therefore not unreasonably withhold any consent necessary under para. (1).

## 10. Data Protection

The parties shall process or use personal data of the respective other party only for contractually agreed upon purposes under the observation of statutory requirements.

## 11. Inventions

(1) Inventions, which are jointly made by the employees of STACKFORCE GmbH and the customer during the execution of a mandate as well as protected privileges issued therefore stand at the joint disposal of the parties.

(2) Inventions which are made during the fulfillment of an order by employees of STACKFORCE GmbH as well as protected privileges issued therefor belong to STACKFORCE GmbH. Inventions which are made during the execution of a mandate by the employees of the customer as well as protected privileges issued therefor belong to the customer.

(3) The grant of licenses to inventions in the sense of paras. (1) and (2) and to the protected privileges issued therefor requires a special written agreement.

## 12. Work product

(1) The transfer of ownership (Eigentum) and use rights in work product of any kind achieved during performance of the contract within the agreed scope of services (Leistungsumfang) and notified to the customer by STACKFORCE GmbH (as, for example, documentation, reports, planning documents, evaluations, drawings, program materials, etc.) requires a special written agreement. STACKFORCE GmbH reserves, however, in any case, a non-remunerated and non-exclusive right to use such work product for the purposes of research and education.

(2) STACKFORCE GmbH carries no responsibility if technical documentation provided to it by the customer or within the customer's mandate breaches existing copyrights, industrial property rights, or other rights of third parties. The customer is alone liable if rights of third parties are violated by the fulfillment of its mandate. The customer shall indemnify STACKFORCE GmbH against all claims of third parties for any such violation upon demand. Item no. 8 herein remains unaffected.

## 13. Termination

(1) Contracts can be terminated at any time on 30 days' notice to the end of a calendar month. In the event STACKFORCE GmbH performs project-services, STACKFORCE GmbH is not entitled to exercise the aforementioned right to terminate the contract.

(2) The termination of contracts for good cause is possible at any time.

(3) In those cases of termination under paras. (1) and (2) the customer shall pay the remuneration minus that part of the remuneration for the agreed-upon scope of services, which was saved by the termination. STACKFORCE GmbH has an additional claim to payment for the services and costs which accrue in connection with the termination, also in respect of third parties.

(4) If the termination occurs for reasons to be attributed to STACKFORCE GmbH, then STACKFORCE GmbH has a claim to payment for the services (Leistungsumfang) brought up to that time only in so far as they can be used by the customer.

(5) Termination requires the written form in any case.

## 14. Issuance of documents and things, retention right

(1) The customer may demand the return by STACKFORCE GmbH of the documents and things issued to it after expiration of a mandate. STACKFORCE GmbH may refuse this return, until all of its claims under the agreement have been satisfied, in so far as such retention of particular documents and things in light of the facts and circumstances, especially in terms of the relative immateriality of the amounts owed, does not violate public policy.

(2) STACKFORCE GmbH can produce and retain duplicates or copies of documents which it returns to the ordering party.

## 15. General provisions

(1) Agreements are concluded in written form. Side agreements are only effective if they have been confirmed in writing by STACKFORCE GmbH.

(2) The transfer of rights and duties under the agreements by the customer to third parties requires the prior written consent of STACKFORCE GmbH.

(3) Jurisdictional venue is the official location of STACKFORCE GmbH. However, STACKFORCE GmbH is entitled to bring legal action against the contractual party at a different statutory jurisdiction as well.

(4) These standard terms and conditions and any contract hereunder between STACKFORCE GmbH and the customer shall be governed by and construed exclusively in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby expressly excluded.