GENERAL TERMS AND CONDITIONS

SCOPE SOLUTIONS AG
Updated August 2023

1   SCOPE AND VALIDITY

1.1   The following General Terms and Conditions (hereinafter referred to as "GTC") govern the conclusion, content and processing of all present and future deliveries, services and offers of scope solutions AG (hereinafter referred to as "scope") to its customers, as set forth in the agreement or accepted offer of scope (hereinafter referred to as "agreement"). Any terms and conditions of the customer shall become integral to the agreement solely upon express written approval from scope.

1.2   When the contractual relationship involves the delivery of software components, the Software Terms of Use and, if applicable, scope's Software Terms of Service, shall also be integral to the agreement.

1.3   If any discrepancies arise among the agreement, the GTC, the Software Terms of Use and/or the Software Terms of Service, the agreement will take precedence over the GTC, the Software Terms of Use and/or the Software Terms of Service.

1.4   Deviations from these GTC, the Software Terms of Use and the Software Terms of Service require written approval from scope.

2   OFFER, CONCLUSION OF AGREEMENT AND WITHDRAWAL

2.1   The offers of scope are subject to change and non-binding. An agreement shall only be concluded upon receipt of the written order confirmation from scope or through delivery to the customer or through performance by scope. The agreement between scope and the customer determines the start of the agreement.

2.2   Declarations by scope, including acceptance or binding orders, must be made in writing. Electronic transmission, particularly through fax or email, fulfils the written form prerequisite.

2.3   Only the written agreement, specifically the scope of services, shall be authoritative for its content. The employees of scope are not authorised to conclude verbal supplementary agreements or to give verbal assurances which go beyond the content of the written agreement, the GTC, the Software Terms of Use and/or the Software Terms of Service.

2.4   In the event of printing or calculation errors or mistakes, scope reserves the right to withdraw from the agreement. scope also retains the right to withdraw if, following an offer containing third-party software, the third-party supplier raises prices and the customer rejects the price hike between the offer being made and the conclusion of the agreement.

3   PRICES AND ALLOCATION

3.1   The prices listed in the agreement or in the price lists of scope applicable at the time of conclusion of the agreement plus the statutory value-added tax shall be decisive.

3.2   Additional deliveries and services, repeat orders, verification services or other supplementary services will incur separate charges.

3.3　Allocations of the customer can only take place if
   i.　their counterclaims are undisputed,
   ii.　have been legally established or
   iii.　scope agrees to this in writing.

4　TERMS OF PAYMENT

4.1　Unless otherwise agreed in writing, payments are due without any deduction upon delivery or performance. If no express date of payment has been agreed, the customer shall be in default 30 (thirty) days after delivery or performance and receipt of invoice, without requiring a reminder.

4.2　4.2Unless otherwise agreed in writing, services shall be invoiced monthly or upon completion of the services.

4.3　scope reserves the right to offset customer payments against outstanding debts. In case of incurred costs or interest, scope may prioritise offsetting payments against costs, followed by interest, and finally against the primary performance.

4.4　A payment will be considered completed only when scope gains access to the amount. Payment by cheque is acknowledged only upon the cheque's clearance and the amount being credited to scope.

4.5　scope reserves the right to fulfil outstanding deliveries or services solely upon advance payment or security provision, if circumstances arise after the conclusion of the agreement that substantially lower the customer's creditworthiness and jeopardise settlement of the outstanding claims in the contractual relationship.

5　DELIVERY AND PERFORMANCE

5.1　Binding delivery dates must be agreed in writing.

5.2　Delays in delivery and/or performance due to force majeure and due to events significantly hindering or making delivery/performance impossible for scope (e.g. due to the failure of the IT systems, strikes, lockouts, official orders, operational disruptions, late deliveries by suppliers, technological changes or technical defects at supplier facilities or theft, etc.), and not attributable to scope, shall entitle scope to postpone a delivery or performance by the duration of the event plus a reasonable start-up time.

5.3　scope shall inform the customer immediately of the occurrence of such events. If these events persist for over a month, both scope and the customer shall be entitled to withdraw from the unfulfilled part of the agreement. However, the customer shall only be entitled to withdraw, except for cases of impossibility, after the expiry of a reasonable grace period to be set by the customer. In such a case, the customer shall not be entitled to any claims for damages.

5.4　The place of performance is the customer's registered office.

5.5　scope is entitled to enlist third parties to fulfil its performance obligations. scope is also always entitled to deliver in parts and to provide partial services.

5.6　If scope is in default, the customer shall be entitled to withdraw from the unfulfilled part of the agreement, or, if the already provided partial service is demonstrably of no interest to the customer, withdraw from the entire agreement after setting a reasonable grace period. The customer shall only be entitled to claims for damages in accordance with Section 8 of these GTC.

6 WARRANTY

6.1 The customer has to inspect the goods delivered and/or services provided for defects.

6.2 The customer must inform scope in writing of any visible defects immediately, but no later than 7 (seven) days after receiving goods and/or services have been provided. If notice is not given, the goods delivered and/or services provided will be considered defect-free and accepted. Defects not evident during the initial inspection must also be reported in writing within 7 (seven) days of their discovery.

6.3 In case of valid complaints about goods and/or services, scope shall initially be entitled to rectify the defect or make a subsequent delivery at its own discretion. If rectification is unsuccessful, the customer can either proportionally reduce the remuneration, withdraw from the agreement or opt for damages in accordance with Section 7 of these GTC.

6.4 The warranty period is 12 (twelve) months and shall commence upon delivery of the goods or upon acceptance, if acceptance is required or agreed.

6.5 The warranty provisions as per Section 7 of the Software Terms of Use and as per Section 6 of the Software Terms of Service with regard to software components remain reserved.

7 LIABILITY

7.1 Unless scope is culpable of gross negligence or intentional misconduct, liability is restricted to CHF100,000.00 (one hundred thousand) for foreseeable, ordinarily occurring damages. For damage resulting from gross negligence or intentional actions, scope will bear unrestricted liability.

7.2 In all other cases scope shall be liable insofar as damage has been caused intentionally or by gross negligence by one of its legal representatives or vicarious agents. Liability in accordance with the Swiss Product Liability Act (PrHG) remains unaffected. Otherwise, claims for damages against scope for breach of duty, indirect or consequential damages, profit or income loss, data loss or data misuse are universally excluded.

7.3 Liability on the part of scope is excluded in particular if scope is or was prevented from the timely and proper performance of services for reasons beyond its control. If binding delivery dates have been agreed as per Section 5.1, Section 5.2 shall apply.

7.4 The customer undertakes to protect themselves effectively against data loss, specifically by routinely creating backup copies of their data. In case of data loss, scope's liability is limited to the usual recovery expenses that would have arisen if regular and risk-appropriate backup copies had been maintained. This limitation shall not apply in the event of gross negligence or wilful misconduct on the part of scope.

8 COPYRIGHTS AND RIGHTS OF USE

8.1 All copyrights and other intellectual property rights connected to scope's services, documents, elaborations and software shall remain with scope.

8.2 scope grants the customer the non-exclusive right to use its services to the extent essential for the customer's contractual purposes and objectives. This shall also apply to software components which are individually created or adapted for the customer (hereinafter referred to as "custom code"). scope shall be entitled, but not obliged, to incorporate custom code into its standard software modules.

8.3 The services provided by scope may encompass open source software, free software and/or third-party software. In this respect, the customer's rights of use shall be governed by the respective applicable licence conditions.

8.4 Transferring, sub-licensing or otherwise granting rights of use to third parties by the customer requires prior written approval from scope.

8.5 Upon scope's request, the customer must provide truthful written information about the scope of use.

8.6 With regard to software components, the provisions of the Software Terms of Use remain reserved.

9 CONFIDENTIALITY AND DATA PROTECTION

9.1 scope and the customer undertake to keep secret all information made available to them by the respective other contracting party which is designated as confidential or which is recognisable as business or trade secrets according to the other circumstances, to protect it against unauthorised access by third parties and – unless required for agreement fulfilment – neither to pass it on nor to exploit it. scope and the customer shall extend this obligation to their respective employees. This confidentiality obligation shall apply beyond the duration of the agreement or performance.

9.2 scope ensures that all its employees comply with the confidentiality and data protection requirements.

9.3 scope processes and stores personal data of the customer only in accordance with the applicable legal provisions, notably the Swiss Data Protection Act and – where applicable – the GDPR.

10 FINAL PROVISIONS

10.1 The rights and obligations of scope arising from the contractual relationships with the customer may be transferred to third parties. In such a case, scope warrants the proper fulfilment of all contractual obligations towards the customer. Insofar as third-party software has been brokered, scope shall only be liable for the proper brokerage of the rights of use in accordance with the terms of use of the respective rights holder. The transfer of the rights and obligations of the customer arising from the contractual relationships with scope shall require the consent of scope which cannot be unreasonably denied.

10.2 If any provision of the agreement or these GTC is found to be invalid or incomplete, the validity of all other provisions remains unaffected. The invalid provision will be substituted by a provision that closely approximates its economic intent and purpose in a legally effective manner. The same principle applies in cases of regulatory gaps.

10.3 Changes and/or supplements to the agreement, including any appendices, must be made in writing.

10.4 scope is entitled to change these GTC. The customer will be informed of any changes at least 3 (three) months before they take effect. If the new version includes substantial unfavourable changes, the customer shall be entitled to object to the changes within 1 (one) month from being notified of the changes.

10.5 The relationship between scope and the customer is subject solely to Swiss substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods and conflict of laws provisions.

10.6 Exclusive jurisdiction over disputes between scope and the customer rests with the ordinary courts in Basel-Stadt, Switzerland.