

General terms and conditions of business of:

UTPB USNER Technologie- und Prozessberatung GmbH

A. General regulations on consultancy services

1. Validity scope of general regulations

- 1.1 The regulations of figures 1. to 11. shall apply for all consultancy offers of UTPB **USNER Technologie- und Prozessberatung GmbH** – referred to in the following as **UTPB** – and for all contracts of UTPB with the customers regardless of content of legal nature of the consultancy services offered by or undertaken by UTPB under contract, unless otherwise defined in figures 12 to 14.
- 1.2 Insofar as consultancy contracts or offers of UTPB include regulations differing to those of the general terms and conditions of business, the individually offered or agreed rules of contract shall overrule these general terms and conditions of business.

2. Cooperation obligation of the customer

In order to permit UTPB to execute the required professional work, the customer shall provide UTPB with comprehensive information on the business, organisational, technical and competitive aspects of the company and provide in good time all documentation required for the execution of the project. The customer shall in particular cooperate personally and as far as necessary through his employees on the project as follows:

- 2.1 All questions of the UTPB consultants on the actual and legal conditions within the customer company should be answered as completely, correctly and as quickly as possible. This also applies to questions of the UTPB consultants on the actual and legal relationships between the customer and his business partners and competitors, insofar as these relationships are known to the customer and/or his managerial staff. The UTPB consultants will pose only questions, to which the answers may be of significance to the project.
- 2.2 UTPB shall be informed without special request and as early as possible on any conditions which could be of significance to the project.
- 2.3 The intermediate results provided by UTPB shall without delay be checked by the customer to confirm that the information contained therein concerning the customer and/or his company is correct. Corrections or desired amendments should be passed in writing to UTPB without delay.

3. Object of contract/Volume of services supplied

The object of the order is the consultancy activity as described and agreed upon in the contract, not the achievement of a defined economic success.

4. Data saving obligation of customer

When the tasks to be performed by UTPB involve work by UTPB consultants on or using EDP devices of the customer, the customer will ascertain in good time prior to the work of the UTPB consultants that all recorded data can in the case of destruction or adulteration be reconstructed from machine readable data carriers with reasonable expenditure of time and cost (data saving)

5. Invoicing, payment

- 5.1 In the absence of deviating agreements UTPB is entitled to invoice the customer monthly for fees and expenses after these have become due or have incurred. Payment of fees on the basis of the degree of success achieved is at all times excluded.
- 5.2 Invoices issued by UTPB in accordance to the contract agreement are due for payment within ten days.
- 5.3 Should the customer be in arrears in payment of invoices to an extent exceeding minor part payments, UTPB is entitled to discontinue work on the project until payment demands are fulfilled.

6. Termination

- 6.1 This contract may be terminated by each party by a written document to the other party when a period of 14 days prior to the end of the month is met. The rights of both parties to the termination of the contract under extraordinary circumstances are not affected.
- 6.2 The customer is obliged to remunerate UTPB for those services performed by UTPB up till the time the termination comes into effect and to pay the expenses incurred by UTPB until this point. Furthermore the customer shall compensate UTPB for justifiable expenses caused by the termination.
- 6.3 Insofar as this contract involves a contract on work and services (see fig. 12) existing legislative regulations on termination apply, in particular paragraphs 643 and 649 BGB (Federal German Legal Code).

7. Hindrance to performance caused by force majeure

The occurrence of force majeure which considerably hinders or makes impossible performance of work, shall entitle the party involved to postpone fulfilment of work for the duration of the hindrance as well as for a reasonable restart period. Labour conflicts and similar circumstances represent force majeure insofar as they are unforeseeable, of a serious nature and without fault of the party concerned. Each party shall inform the other immediately of the occurrence of such events.

8. Liability

- 8.1 If, and to such extent that a consulting error and/or deficiency in the factory completed by UTPB is caused by the customer not having fulfilled his cooperation obligation according to fig. 2 completely or in good time, UTPB is excluded from liability. In the case of disagreement it is the responsibility of the customer to produce evidence that cooperation obligations were fulfilled completely and in good time. Furthermore UTPB accepts no liability for customer damages caused through non-fulfilment of the data saving obligation according to fig. 3.
- 8.2 UTPB is liable to the customer for any deliberate damage caused by UTPB, its representatives, managerial or other staff or agents within the framework of valid legal regulations regardless of the legal basis involved. The same ruling applies for damage caused by UTPB, its representatives or managerial staff through gross negligence. For damages caused by workers who are not managerial staff UTPB is liable only when the damage was caused by gross contravention of the contract obligations.
- 8.3 For contravention of significant contract obligations through UTPB, its agents, managerial staff or other employees UTPB is also liable in the case of minor negligence, but only to the sum of 250,000 euros per case of damage. At the request of the customer UTPB is willing to accept liability exceeding this sum, but this would require separate written agreement.
- 8.4 UTPB is not liable for contract atypical damages caused by its agents, managerial staff or other employees even if minor negligence is involved unless UTPB received notification from the customer regarding the hazard of unusual damage.
- 8.5 The above exclusions and limitations do not apply to guarantees given by UTPB in the contract or to damages involving injury to life, body or health.
- 8.6 The time limitation for damage claims of the customer against UTPB is governed by valid legal rulings with the additional measure that these expire in any case after a period of 5 years after the notification of final judgement. Damage claims involving injury to life, body or health are subject exclusively to valid legislative ruling.

9. Labour piracy

For the duration of this contract and for a period of 12 months after termination of the contract each party undertakes to make no active attempt to hire or to hire any employee of the other party except in the case of the other party having given prior permission to do so.

10. Jurisdiction, general terms of conditions and business of the customer

- 10.1 For these terms and conditions of business and for all legal dealings between the customer and UTPB the laws of the Federal Republic of Germany shall apply exclusively and German international private jurisdiction shall be excluded.
- 10.2 The general terms and conditions of business of the customer shall have no effect for UTPB, even when UTPB does not explicitly refute their application.

11. Place of fulfilment, court of jurisdiction, partial invalidity

- 11.1 Place of fulfilment for all services of UTPB is Diedorf.
- 11.2 Court of jurisdiction for all legal proceedings against UTPB is Augsburg.
- 11.3 Should a definition in these terms and conditions of business or a definition within the framework of other agreements between the customer and UTPB be or become ineffective, the validity of all other definitions or agreements shall not be affected by this.

B. Complementary rulings for work contracts

12. Application scope of figs. 12 to 14.

The rulings of figs. 12. to 14. apply in addition to those of figs. 1. to 11. in the case of consultancy offers or contracts from UTPB on the compiling of analyses, reports, official expertise documents, studies and similar works, when and insofar as the remuneration to UTPB according to the contract is dependent mainly on the completion of the work involved (work contracts). Furthermore the rulings of figs. 12 to 14. as well as those of figs. 1. to 11. apply to partial services performed by UTPB when these are listed separately from other services in the consultancy offer or contract, e.g. are separately listed for a procedure in stages or phases.

13. Acceptance of work performed

- 13.1 The customer is obliged to confirm acceptance of the work performed according to contract and submitted by UTPB unless acceptance is not possible due to the nature of the work, in which case completion of work will count as acceptance. Unless the work has a significant fault acceptance is considered as given when the customer does not fulfil his obligation to accept within 14 days of submission of the work. If the customer uses the submitted work for its intended purposes, this also counts as acceptance of the work.
- 13.2 The above rules on acceptance apply correspondingly for all separate part work performed by UTPB within the individual performance phases in the consultancy contract insofar as a separate acceptance or presentation schedule for such part works was agreed upon.

14. Notification of defects, warranty

- 14.1 All apparent defects in the work must be reported to UTPB immediately after submission of this. Non-apparent faults must be reported in writing immediately they come to notice, otherwise the warranty claim expires.
- 14.2 Under warranty the customer can in the first instance claim only rectification of fault without charge. If the rectification is not performed within a reasonable period or does not function satisfactorily, the customer has the choice of either reducing remuneration accordingly or withdrawing from the contract according to valid legal regulations.
- 14.3 The time limitation for lodging warranty claims is decided by valid law.